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ST. LOUIS, MO., FEBRUARY 23, 1894.

We are pained to announce the death of Mrs. Myra Bradwell, editor of the *Chicago Legal News* and the first woman lawyer to apply for admission to the bar of Illinois. In 1869, she passed the required examination but was refused admission. She sought the aid of the courts to secure her right to practice and her application was passed upon by the Supreme Court of Illinois and the Supreme Court of the United States, but in both instances unfavorably. A few years later the legislature passed an act permitting women to gain admission to the bar but Mrs. Bradwell had become interested in the work of editing the *Legal News*, which she established in 1868, and she did not renew her demand. Of her conduct of that publication it is sufficient to say that it has been such as to place it in the front rank of legal periodicals. She was recognized as a woman of rare talent, of great strength of character and a leader in the movement to give women equal rights before the law and equal opportunities to enter all appropriate fields of useful activity.

A novel phase of life insurance is developed by the recent North Carolina case of Trinity College v. Travelers' Insurance Co., 18 S. E. Rep. 176, viz: churches as beneficiaries of insurance policies on the lives of young men who are members of their congregations. To insure their young men is said to be regarded by many religious and charitable institutions as a profitable investment. The young man is encouraged to take out a policy for the benefit of the organization, either paying the premiums himself in place of contributing to the treasury, or leaving the organization to pay for them. In the case referred to it was held by Judge Burwell that where a church pays the premiums the policy is void as a wagering contract, for where no ties of blood or marriage exist, one can have an insurable interest in the life of another only when he is a creditor of or surety for such other. Another phase of the question is presented where the young man takes out a policy for the benefit of the church, and pays the premiums himself. This it would seem ought also to be void for the same reason as in the other case. If the man takes out a policy for the benefit of a person who has an insurable interest, *e. g.*, for his own benefit, and the policy is then assigned to the church, is the assignment valid? This is a question upon which the courts differ, some holding the policy void in the hands of one not having an insurable interest, whether the policy was obtained by direct contract with the insurer or by assignment from one who had an insurable interest (Warnock v. Davis, 104 U. S. 775; Franklin Co. v. Sefton, 53 Ind. 380; Mich. Mut. Benef. Asso. v. Rolfe, 76 Mich. 146). Other courts hold that the assignment of a contract of insurance is like the assignment of any other contract, and the contract being valid in the hands of the assignor is also valid in the hands of the assignee (St. John v. Am. Mut. Co., 13 N. Y. 31; Olmstead v. Keyes, 85 N. Y. 593; Mutual Co. v. Allen, 138 Mass. 24; Scott v. Dickson, 108 Pa. St. 6).

What may fairly be considered as "external means" within the meaning of an accident insurance policy is often a nice and difficult point as is illustrated by the recent English case of Hamlyn v. Crown Accidental Insurance Company, 1 Q. B. 750. The policy insured the plaintiff against "any bodily injury caused by violent, accidental, external, and visible means," but there were many exceptions such as intoxication, fits, steeplechasing or otherwise wantonly or negligently exposing himself to any unnecessary danger or arising from natural disease or weakness or exhaustion consequent upon disease. One day the plaintiff was standing in his shop when a lady customer and child entered. The child dropped a marble, and the plaintiff stooped to pick it up, when he wrenched his knee, and could not get it straight again. He was disabled for nine weeks, though he had never previously suffered from weak knee. The injury was described by the doctors as a dislocation of the internal cartilage of the knee joint. The plaintiff claimed compensation, and the question thereupon came to be whether the injury was caused by external means. All the learning on the subject was brought to bear. The result was, that the

Court of Appeal, held that the injury did not come within the exceptions of the policy. The court said the injury was accidental, because the plaintiff did not mean to wrench his knee. Then it was fairly described as something violent. So far, there was not much difficulty, but the difficulty was to say that it was by external means. If the injury had been caused by reason of something internal it would not be within the policy. The court held that as it was clearly not internal it must be external, and, hence, would suit the words. Lindley, L. J., said that the act of reaching after the marble, and the wrench which accompanied the act were fairly classed as external means. So the company were held to be liable.

NOTES OF RECENT DECISIONS.

INSURANCE—PAROL CONTRACT—DELIVERY OF POLICY—AUTHORITY OF AGENT.—In Newark Machine Co. v. Kenton Ins. Co., it was held by the Supreme Court of Ohio that a valid contract of insurance may be made by parol, when not forbidden by statute, or a provision of the company's charter which has been brought to the knowledge of the other contracting party; and, as in other cases of parol contract, the assent of the parties to the terms of the agreement may be shown by their acts and the attending circumstances, as well as by the words they have employed. When nothing is said in the negotiations about special rates of insurance, or special conditions of the policy, it will be presumed that those which were usual and customary were intended. In determining whether there has been a delivery of a policy, effect will be given to the intention of the parties; and when the terms of an executed policy have been unconditionally accepted by the insured, and it has thereafter been treated as in force by the parties, its delivery will be regarded as complete, though it remain in the hands of the insurer's agent. An agent authorized to make contracts of fire insurance and issue policies may waive payment in cash of the premiums, and give time for their payment, unless there are restrictions upon his authority of which the insured has notice, and such waiver may be expressed or implied. Where, under an arrangement with the insured by which his insurance was to be kept up to a specified amount by renewals or new policies, it was the custom of the agent to charge the premiums as policies were issued or renewed, and have periodical settlements with the insured when the premiums would be paid, a credit for a premium so charged to the next period of settlement may be implied.

PUBLIC OFFICERS — ASSIGNMENT OF UNEARNED SALARIES—PUBLIC POLICY—CRIMINAL LAW—LARCENY.—Two courts have recently held that the assignment of the unearned salary or fees of a public officer is void as against public policy. This ruling was made by the Supreme Court of Missouri in State v. Williamson, 23 S. W. Rep. 1854, and by the Supreme Court of Texas in State Nat. Bank v. Fink, 24 S. W. Rep. 256. In England the authorities seem to be unanimous in holding such assignment void as being contrary to public policy. Flarty v. Odlum, 3 Term. R. 681; Barwick v. Reade, 1 H. Bl. 627; Arbuckle v. Cowtan, 3 Bos. & P. 328; Wells v. Foster, 8 Mees. & W. 149; Hill v. Paul, 8 Clark & F. 307; Palmer v. Bate, 2 Brod. & B. 673; Liverpool v. Wright, 28 L. J. Ch. 871; Davis v. Duke of Marlborough, 1 Swanst. 79; Stone v. Lidderdale, 2 Anstr. 533; Lidderdale v. Montrose, 4 Term. R. 248. The American text writers and courts nearly all follow the rule laid down in the English cases. Story, Eq. Jur. § 1040*a*; Mechem, Pub. Off. § 874; Greenh. Pub. Pol. p. 351; Bliss v. Lawrence, 58 N. Y. 442; Bangs v. Dunn, 66 Cal. 74, 4 Pac. Rep. 963; Schloss v. Hewiett, 81 Ala. 266, 1 South. Rep. 263; King v. Hawkins (Ariz.), 16 Pac. Rep. 434; Bank v. Wilson, 122 N. Y. 488, 25 N. E. Rep. 855; Field v. Chipley, 79 Ky. 260; Schwenk v. Wyckoff, 46 N. J. Eq. 560, 20 Atl. Rep. 259; Webb v. McCauley, 4 Bush, 10. In People v. Dayton, 50 How. Pr. 143, it is held that the assignment of unearned fees does not fall within the rule sustained by the courts as to salaries. But in the case of Bank v. Wilson this case was disapproved by the Court of Appeals of that State. It was there held that the same reasons applied against assigning unearned fees as to a salary, and that such assignment was void. The validity of an assignment of unearned fees was the subject under consideration in Schloss v. Hewlett, 81 Ala. 266, 1 South. Rep.

263, and the court there held the assignment to be against public policy and void. Field v. Chipley, 79 Ky. 260, was a case involving the validity of an assignment of fees by a clerk, the fees being unearned, and the assignment was held to be void. There is no distinction in principle between the assignment of unearned fees and the assignment of unearned salary. Bliss v. Lawrence, 58 N. Y. 442. In State v. Hastings, 15 Wis. 75, the court held that a judge of a court could assign his salary before it was earned. So slight a consideration of the number of cases decided by courts of eminent ability shows that the court in that case did not give sufficient thought to the question involved to entitle the opinion to weight. In the case of Mulhall v. Quinn, 1 Gray, 105, which is sometimes referred to as authority for the validity of such assignments, the matter in dispute was neither fees nor salary of a public officer, but was for the price of work done for a city. Brackett v. Blake, 7 Metc. (Mass.) 335, is referred to, but in that case the question of public policy was not considered. Macomber v. Doane, 2 Allen, 541, was a case in which an officer had assigned his salary, but the only question considered was as to whether or not it was assignable, on account of its being a mere possibility. Public policy was not discussed or mentioned in the case. The case of State v. Hastings is the only case, except People v. Dayton, that we find sustaining any such assignment when the case was placed before the court on the ground of violation of public policy. We have seen that the latter case was overruled, which leaves the former alone to support the assignment of such claims. In the Missouri case first mentioned it was held also that a government employee who has made such an assignment and has been appointed agent of the assignee to collect it, is not guilty of larceny or embezzlement if he collects and appropriates it.

MASTER AND SERVANT — DEFECTIVE ELEVATOR—PASSENGERS OR SERVANTS.—In McDonough v. Lanpher, decided by the Supreme Court of Minnesota, it appeared that defendants carried on their business in a five-story building, using the whole of it. In the building was an elevator, running from the lowest to the highest story, used for freight, but in which the employees in the business were permitted, but not required, to ride in going up to and down from the stories in which they respectively worked. It was held, that while so riding they were employees, and not passengers, and the degree of care required of defendants was that required on the part of the master towards his servant, and not that imposed on a common carrier of passengers in respect to those carried by him. Gilfillan, C. J., says:

The appellants make several assignments of error, only one of which it is necessary to consider. The court instructed the jury: "If you find that this elevator described in the testimony was used, with their knowledge and consent, as a passenger elevator, in that case the defendants were bound to the exercise of the highest human skill, foresight, and prudence in making the elevator safe for the purpose of transporting human beings from one portion of the building to another. So much for the obligation resting on the defendants in case you find this to have been a passenger elevator." That is the degree of care required of a common carrier of passengers towards the passengers he carries. It is a higher degree than is required of a master towards his servant. That degree is stated in Cooley on Torts (page 567) thus: "The law does not require him to guaranty the prudence, skill, or fidelity of those from whom he obtains his tools or machinery, or the strength or fitness of the materials they make use of. If he employs such reasonable care and prudence in selecting or ordering what he requires in his business as every prudent man is expected to employ in providing himself with the conveniences of his occupation, that is all that can be required of him." See Gates v. Railway Co., 28 Minn. 110, 9 N. W. Rep. 579. The rules are general, and from considerations of convenience and public policy there are no exceptions. There are sound reasons for requiring a higher degree of care in one case than in the other. An obvious one is that, in the case of the passenger, he neither does known or can know, nor is he called on to inform himself, whether the carrier employs competent and careful servants and fit and proper machinery and means for performing the service, but he commits himself unreservedly to the care of the carrier; while the servant in most cases may know, and, if the matter is open to ordinary observation, is bound to know, whether the machinery and appliances employed by the master be fit and proper. As there cannot be two rules as to cases between master and servant, one applying to the use of one kind of machinery and another to another kind, it is evident that if the relation between plaintiff and defendants at the time of the injury was only that of master and servant, the instruction was wrong. We suspect the court below was misled by some indefiniteness in the opinion in Goodsell v. Taylor, 41 Minn. 207, 42 N. W. Rep. 873, which was not a case of master and servant, but of innkeeper and guest; and it was said: "The relation between the owner and manager of an elevator for passengers is similar to that between an ordinary common carrier of passengers and those carried by him." That would not be applicable where a relation requiring a different degree of care exists, and the person is riding and being carried in that relation. The question comes, then, to this: Was plaintiff, in riding in the elevator from the lower to the fifth story of a building, doing so as

the defendants' servant, or was she riding as a passenger, being carried by them as a common carrier? We find no case precisely similar in which that question was distinctly passed on. Treadwell v. Whittier, 80 Cal. 574, 22 Pac. Rep. 266, was not a case of an employee, but of a customer, riding in an elevator. It was therefore not unlike Goodsell v. Taylor, and the rule expressed in the latter case was applied. Wise v. Ackerman (Md.), 25 Atl. Rep. 424, was the case of an employee, and the court, treating the plaintiff as in the elevator as an employee, and not as a passenger, stated the rule: "But an elevator is in many respects a dangerous machine, and, though it may be primarily intended only as a freight elevator, yet, if the employees, in the course of their employment, are authorized or directed to use the elevator as a means of personal transportation, the employer controlling the operation of the elevator is required to exercise great care and caution, both in the construction and operation of the machine, so as to render it as free from danger as careful foresight and precaution may reasonably dictate." This is considerably short of the degree of care required of a common carrier of passengers and stated in the instruction of the court below,—"the exercise of the highest human skill, foresight, and prudence." It is but the expression, in different terms, of the degree required of a master towards his servant; for an ordinarily prudent man employing a dangerous machine where human life is risked will exercise great care and caution in respect to its construction and operation. The only cases nearly analogous in which the question whether the person injured was a passenger or employee was passed on were cases where a railroad company was accustomed to carry their employees, without charge, to and fro between the place where they lived or boarded and the place where they worked for the company, and one of them was injured while riding to and from the place of work. Of these cases Gillenwater v. Railroad Co., 5 Ind. 339, holds that the person so carried was a passenger. Fitzpatrick v. Railroad Co., 7 Ind. 436, cited by respondent to the same point, does not so hold; the court saying: "He was not, it is true, a mere passenger. His travel on the cars was an incident to the business in which he was employed; but, under an agreement with the defendants he was to be regularly conveyed to and from his work. This it seems to us is an implied engagement that they would convey him as safely and securely as if he really had been a passenger in the ordinary sense of the term." So far as that may mean that, though the person injured was not a passenger, but an employee at the time, there was such implied agreement, or any obligation of care other than that imposed by law upon a master towards his servant, the case stands alone; and we think the grounds on which the court made that remark were overruled in Railway Co. v. Arnold, 31 Ind. 174. State v. Western Maryland R. Co., 63 Md. 433, is an instructive case. The person killed was employed by the company as brakeman on a passenger train running in the morning from U B to B C, and returning in the evening, every day, except Sundays. On arriving at U B Saturday nights, the time was his own until Monday morning, when he was expected to be at U B to resume his duties. Sunday he took a train at U B to go to B C, where his family resided, traveling on a pass which the conductor of his train held for himself and crew, and on that trip the decedent was killed in a collision. It did not appear that by the terms of his employment he was to be carried Saturday evening or Sunday from U B to B C, and back again for Monday morning. The court reviewed most of the decisions to that time, and held the decedent was a passenger when killed, and said: "In whatever else they may differ, these cases all agree upon one principle, and that is that if the plaintiff is not, at the time of the accident, engaged in the actual service of the company, or in some way connected with such service, the company is liable for the negligence of its employees." O'Donnell v. Railway Co., 59 Pa. St. 239, held that a carpenter who was to be carried to and from his place of work was, while being so carried, a passenger. On the other hand, holding that in cases of the kind the person is carried as an employee, and not as a passenger, are Tunn v. Railway Co., L. R. 1 C. B. 291; Gillshannon v. Railroad Co., 10 Cush. 228; Seaver v. Railroad Co., 14 Gray, 466; Russell v. Railroad Co., 17 N. Y. 134; Ryan v. Railroad Co., 23 Pa. St. 384; and Railway Co. v. Salmon, 11 Kan. 83. Rosenbaum v. Railroad Co., 38 Minn. 173, 36 N. W. Rep. 447, is really to the same effect. The company transported the employees daily from the boarding car to their place of work and back again. The plaintiff, having returned to the boarding car, found he had left his coat at the place of work, got upon a gravel train to go back and get it, and while on it was injured. If he got on the car as a passenger, he was a trespasser, for the conductor had no authority to take passengers; but if he got on as an employee he was not, and the court held he was on the train as an employee. There is, therefore, a considerable weight of authority in support of the proposition that in such cases the person is carried as an employee, and not as a passenger. And in a case like this reason would seem to point to the same result. State the matter to one not used to making hair-drawn distinctions but to judging by the dictates of the business common sense, and we do not think he would hesitate in arriving at that result. In our opinion, from the time plaintiff entered the building for the purpose of going to work she was there as employee, whether she walked up the stairs or rode up in the elevator.

HAVE ANIMALS RIGHTS?

An animal is "any animate being which is not human, endowed with the power of voluntary motion."[1] The idea that they have rights was not recognized at common law;[2] whether or not it is recognized under modern statutes, it is the purpose of this paper to discuss. Injury to animals as property, like other malicious mischief, was always forbidden, and by the Black Act,[3] the penalty was death to the offender; cruelty amounting to a public nuisance was also indictable at common law.[4] But cruelty, as such, is punishable only by virtue of recent legislation.

[1] Bouv. Dict. 121.

[2] Bish. Stat. Cr. § 1100.

[3] 9 Geo. I, ch. 22; 2 East P. C. 1072.

[4] 1 Bishp. Cr. L. § 597; U. S. v. Jackson, 4 Cranch, C. C. 483; U. S. v. Cross, *Id.* 603; see, 7 Rep. (N. S.) 88; *cf.* Bish. St. Cr., § 1100.

The Statutes Summarized.[5]—These statutes of the various States and England are substantially alike.[6] The following are typical of all: By 39 & 40 Vict. ch. 77, § 6, the performance in public of painful experiments on living animals is absolutely prohibited. By other sections, such experiments may be performed only by a licensed person to advance physiological knowledge, or, when necessary, in court; the act not to apply to invertebrate animals. By 12 or 13 Vict. ch. 92, § 2, "if any person shall cruelly beat, ill-treat, overdrive, abuse or torture, or cause or procure to be cruelly beaten, ill-treated, overdriven, abused or tortured, any animal," he shall be liable to a penalty. The Illinois statutes[7] provides a penalty for any one "who shall willfully overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate or kill," or cause to be so treated any horse or other animal (the word "animal" as used in this act to mean any living creature), or who shall cruelly work any animal when unfit for work or abandon the same to die, or carry any animal in any vehicle in an unnecessarily cruel or inhuman manner; no railroad shall confine any animal in cars for more than twenty-eight consecutive hours, unless properly fed and watered on the car, without unloading for rest, water and feeding for at least five consecutive hours; any person who shall be connected in any way with any place kept or used for fighting or baiting any bull, bear, dog, cock, or other creature, shall be guilty of a misdemeanor. This is practically the law in all the States. In New York[8] it is forbidden to use dogs for hauling for business purposes in any city or incorporated village, without a license; and vivisection can be performed "only under the authority of the faculty of some regularly incorporated medical college or university of the State of New York." In Delaware,[9] causing death of animals by careless riding or driving is made a misdemeanor. In Massachusetts,[10] mutilation of a live lobster by severing its tail is punishable and possession of the tail is *prima facie* evidence to convict. "Docking" a horse is a misdemeanor in Illinois.[11] Trap-shooting of live pigeons is punished in Vermont.[12] By act of Congress,[13] the secretary of agriculture is authorized to prescribe rules for the accommodation and humane treatment of cattle exported.

Scope of the Statutes.—The general idea of these statutes seems to be the prohibition of such acts or omissions as will inflict pain upon or kill any living creature, willfully or needlessly. "Any living creature" is an astonishingly comprehensive term. It brings the impalement of a worm on a fish-hook, the eating of live oysters, or the boiling of cholera germs within the scope of the letter of the act even the word "animal" in its ordinary meaning, is exceedingly broad. The adjudications on this point are few and indirect,[14] but doubtless the statutes would be confined within reasonable limits in their application by the courts, although when a legislature goes to the length of making the detachment of a living lobster's tail a crime it is rather hard to say where they mean to stop. This prohibition of cruelty is superior to the rights of ownership,[15] and regardless of value,[16] of the animal injured and of the privacy or publicity of the act.[17]

Theory of the Statutes.—Disregarding for a moment the law of the case, can animals be said as a matter of fact to have rights? Man

[5] First Statute, Mass. 1641; Old Colony Laws, p. 95; First English Statute, 1822, 3 Geo. IV. ch. 71.

[6] Bish. Stat. Cr. § 1102.

[7] Ill. Stats. Mar. 8, 1872.

[8] Act April 12, 1867.

[9] Laws 1891, ch. 267, p. 586.

[10] Sts. 1891, ch. 122, p. 63.

[11] Sts. 1891, p. 101.

[12] Sts. 1890, No. 70, p. 73.

[13] Act Mar. 3, 1891, 26 Sts. at large, ch. 521, p. 833.

[14] St. v. Bogardus, 4 Mo. App. 215; Grise v. St., 37 Ark. 456; "Domestic animal," Colam v. Paget, L. R. 12, Q. B. D. 66; Budge v. Parson, 3 Best & S. 382; St. v. Harriman, 75 Me. 562; Swartzbaugh v. People, 85 Ill. 457; St. v. Gould, 26 W. Va. 258; *cf.* 29 Abb. L. J. 204; "Animal," Reg. v. Brown, 61 L. T. 594; St. v. Giles (Ind.), 25 N. E. Rep. 159; 125 Ind. 124; St. v. Brunner, 111 Ind. 98; Com. v. Turner, 145 Mass. 296; Com. v. Lewis, 140 Pa. St. 261; "Dumb animal," McDaniel v. St., 5 Tex. App. 475; "Beast of Burden," People v. Court of Special Session, 4 Hun (N. Y.), 341. A cock is an "animal," People v. Klock, 48 Hun, 275.

[15] St. v. Avery, 44 N. H. 392; Grise v. St., 37 Ark. 456; Com. v. Whitman, 118 Mass. 458; St. v. Gould, 26 W. Va 258; Caldwell v. State, 49 Ala. 34; St. v. Brocker, 32 Tex. 611, overruling St. v. Smith, 21 *Id.* 748; Turner v. St., 4 Tex. App. 586; Darnell v. St., 6 *Id.* 482; Benson v. St., 1 *Id.* 6; Com. v. Lufkin, 7 Allen, 579; Com. v. McClellan, 101 Mass. 34; but if alleged. must be proved as laid, St. v. Brunner, 111 Ind. 98; Collier v. St., 4 Tex. App. 12; Rose v. St., 1 *Id.* 400.

[16] Grise v. St., 37 Ark. 456; St. v. Gould, 26 W. Va. 258.

[17] Grise v. St., 37 Ark. 456.

has a right to life and personal security because the recognition of this right in every individual is necessary for the progress and existence of the race, or because he is self-conscious, intelligent and free, and master of his own acts and destiny beyond the control of other individuals who are but his equals; and this right cannot be taken from him or infringed except by the joint act of the community. But no such considerations avail to establish rights to life or bodily security in animals, and no moral relationship between them and us can be admitted. They cannot be said to have rights in any true sense of that term. Yet the acts of men concerning animals, like all other human acts, have moral aspects, and these may properly be subject to legal regulation. Sodomy is a crime. In like manner the wanton killing of a dog may reasonably be made illegal not because the dog has a right to life but because such blood-thirstiness and brutality in man are destructive of that morality and humanity upon which all government is founded. So of the torture of any sensitive creature. There is a great deal of false sentiment upon this point. In the first place animals probably do not and cannot suffer nearly as much as is generally believed. They may writhe and groan but so might a senseless corpse under electric stimulus. Pain is in consciousness, not in the nerve—in the nerve it is only a mode of motion which is a different thing. As the brutes have not man's higher consciousness, so they have not his capacity for suffering. Moreover, in many instances, as for example the reported case of a man who poured acid in the eye of a mare,[18] the feeling excited in us which we take for sympathy with the suffering of the brute, is in reality more probably an instinctive revulsion from the hideousness of the act—akin perhaps to the sensation one feels at the sound of filing a saw, or at the sight of blood, or of a half-dissected corpse, or of any sickening spectacle. Let us not confuse subjective matters with the facts of animal sensation and suffering. Still brutes undoubtedly feel pain to some extent, and a man who takes pleasure in torturing them degrades his own nature and threatens the morality of society. "Upon religion, morals and education, society and the State itself rest. Therefore, within practical limits, yet not to the full extent which mere theory might indicate, the law protects them and holds to be indictable acts wrongfully committed to their detriment."[19] Is this the theory of the foregoing statutes? They purport to forbid cruelty not injustice. They prohibit needless killing and willful injury. They therefore allow any man to kill or hurt an animal whenever it may be to his advantage or conducive to his reasonable pleasure to do so, and the possibility of such infringements is repugnant to the idea of a legal right to life or personal security. The statutes give no such right in express terms or by necessary implication, and being in derogation of the common law they must be strictly construed. In Grise v. St., 37 Ark. 456, an indictment for needlessly killing a trespassing hog, Eakin, J., said in part: These statutes "are the outgrowth of modern sentiment. They spring originally from tentative efforts of the New England colonies to enforce imperfect but well recognized moral obligations. They first had in view only to compel benevolence and mercy to useful animals wasting their lives in man's service. In our law they are made to embrace 'all living creatures.' It is obvious that laws of this class pushed to this extreme limit must be handled by the courts with great care. They must be rationally construed with reference to their true spirit and intention. They seem to recognize and attempt to protect some abstract rights in all that animate creation made subject to man by the creation, from the largest and noblest to the smallest and most insignificant. The peculiar legislation we are now called to discuss must be considered wholly irrespective of property or of the public peace, or of the inconveniences of nuisance." * * * "Society could not long tolerate a system of laws which might drag to the criminal bar every lady who might impale a butterfly, or every man who might drown a litter of kittens. Rationally considered this class of laws may be found useful in elevating humanity by enlargement of its sympathy with all God's creatures and thus society may be improved." "They seem to recognize abstract rights in all that animate creation made subject to man," says the court. This is rather non-committal, and the rest of the decision strongly favors the view

[18] Queen v. Welsh, 1 Q. B. D. 23.

[19] 1 Bishp. Crim. Law, § 495.

that the intention of these statutes is merely to suppress degrading brutality in man. Commenting on the court's construction of the New Hampshire statute as reported in St. v. Avery, 44 N. H. 392, Mr. Bishop says: "This statute like all others on the subject, is based on the theory unknown to the common law that animals have rights which like those of human beings are to be protected. A horse under its master's hand stands in a relation to the master analogous to that of a child to a parent. The law must fix bounds to the right of discipline by blows in the one case the same as in the other, and no man can carry out a 'theory' contrary to the law without being punished for so doing."[20] St. v. Avery, was an indictment for maliciously beating a horse, the defense being that the beating was for the purpose of breaking in and training an unruly animal. "The law in question," said the court, "was designed to restrain the exercise of cruelty to animals and is founded upon a high moral principle which denounces the wanton and unnecessary infliction of pain even upon animals created for the use of man, as contrary alike to the principles of christianity and the spirit of the age." * * * "If resorted to in good faith and for a proper purpose it would not be neccessarily malicious because it may be deemed to be excessive, but the undue severity should be carefully weighed by the jury in determining whether it was not in fact dictated by a malevolent spirit and not by any justifiable motive. It is not, however, like the case of a parent or master who has the right to inflict only reasonable and moderate chastisement and is liable to punishment if he exceed it, but under the law now in question, there is no liability for such excess unless it be found to be malicious. If the beating was for the single purpose of breaking the animal of a vicious habit, that was a complete answer to any charge of malice if he did not go beyond his own rule, but the jury might inquire if the beating was aggravated from the influence of any evil motive as from violent passion and at the interference and remonstrance of others against his severity, for any excess thus caused should be regarded as malicious." The decision is vague in some respects. A man may be indictable although he does not intend to be cruel. He need intendonly to commit the act which the law declares to constitute cruelty, or he may be criminally negligent.[21] What motive will excuse him is also a matter for legal determination and is not left to his own judgment. But these fundamental principles of all criminal jurisprudence do not necessitate the inference, that the statutes forbidding cruelty to animals, confer rights upon them or make the relation between them and their owners like that between parent and child. A father chastises his child for the child's benefit, either directly or indirectly, but a man for his own benefit may make his horse suffer, though the result be the death of the brute. In Com. v. Lufkin, 7 Allen, 579, cited by Mr. Bishop in this connection, the difference between intention and motive is discussed. Hoar, J., said in part: "The jury were instructed that they must be satisfied that the defendant inflicted the blows upon the horse purposely, intentionally; and that it was immaterial what may have been his motive for so doing; and that they must also be satisfied that the blows caused excessive pain and suffering to the animal." * * * "The motive of intending to inflict injury or suffering is not by the terms of the statute made an essential element of the offense. Cruel beating or torture for the purpose of training or correcting an intractable animal; pain inflicted in wanton or reckless disregard of the suffering it occasioned and so excessive in degree as to be cruel; torture inflicted by mere inattention and criminal indifference to the agony resulting from it, as in the case of an animal confined and left to perish from starvation; we can have no doubt would be punishable under the statute even if it did not appear that the pain inflicted was the direct and principal object. Severe pain inflicted upon an animal for the mere purpose of causing pain or indulging vindictive passion is cruel, and so it is if inflicted without any justifiable cause and with reasonable cause to know that it is produced by the wan-

[20] Bishp. Stat. Cr. § 1101, 1st Ed., the passage is omitted in the 2d Ed.

[21] As to intent under these statutes, see, People v. Brunnell, 48 How. (N. Y.) Pr. 436, 442, 443; St. v. Hackfath, 20 Mo. App. 614; Ross Case, 3 City Hall Rec. 191; Accident and knowledge, see, Com. v. Wood, 111 Mass. 408; Com. v. Flannigan, 137 Mass. 559; Tatun v. St., 66 Ala. 465; Small v. Warr, 47 J. P. 20; Elliott v. Osborn, 65 L. T. 378; People v. Brunnell, 48 How. Pr. 435.

ton or reckless conduct of the person who occasions it." But, "it is certainly not true, as an abstract proposition, that it is immaterial what may be the motive of a person who inflicts pain upon an animal in determining the criminalty of the act. Pain inflicted for a lawful purpose and with a justifiable intent, though severe, does not come within the statutory meaning of "cruel." Thus a surgical operation causing the most intense suffering may be justifiable and is not criminal. To drive a horse at a rate of speed most distressing to the brute when the object is to save human life for example or to attain any other object of adequate importance, may yet be lawful." But although the courts and not the accused are to decide what constitutes the offense, yet they do so not by defining rights in animals but by determining what shall constitute brutality in man. In Com. v. Wood, 111 Mass. 408, an indictment for overdriving a horse,[22] Ames, J., said: "The jury were told that 'if in the proper exercise of his own judgment, he' (the defendant) 'thought he was not overdriving the horse he must be acquitted,' and that he could not be convicted unless upon proof that he knowingly and intentionally overdrove. A 'proper exercise of his own judgment' means the honest exercise of his judgment as distinguished from mere recklessness of consequences or wilful cruelty. Under such instruction the jury would be required to consider his alleged inexperience and want of knowledge as to the proper treatment of horses." In People v. Trindale, 10 Abb. Pr. N. S. 374, an indictment of the driver and conductor of a horse car for overloading their horses the court said: "There is nothing in the argument that no crime exists except there be an intention to transgress. If a man overloads a car beyond the ability of the horses attached to it to draw, he is within the act in question and guilty of cruelty. The intention is assumed directly from the act itself." If this be construed to mean that a man is guilty who intends to overload a car, whether or not he intends to be cruel, there is no conflict with the Massachusetts case.[23] Finally we seem to reach a direct adjudication on the theory of these statutes in Com. v. Turner, 145 Mass. 296. Defendant let a fox loose from his custody in the presence of dogs who caught and mangled it. He was charged with exposing an animal to unnecessary suffering contrary to the statute. W. Allen, J., "The word animal must be held to include wild and noxious animals unless the purpose of the statute or the context indicate a different meaning. There is nothing in the general purpose or intent of the statute that would prevent it from including all animals within the common meaning of that word. The statute does not define an offense against the right of property in animals, nor against the rights of the animals that are in a sense protected by it. The offense is against the public morals which the commission of cruel and barbarous acts tends to corrupt." * * * "It cannot be said as matter of law, that throwing a captive fox among dogs to be mangled and torn by them is not exposing it to unnecessary suffering." The view here expressed seems the only reasonable one. It prevents this legislation from being pushed to a ridiculous extreme and it justifies that latitude in the treatment of animals which is wholly inconsistent with the idea that they have rights but which the common sense of mankind approves and the courts universally allow when they come to interpret these statutes.

Application of the Statutes.[24]— With respect to the killing of animals, it is to be noted that the killing need not be painful to come within the statute.[25] Indiscriminate or causeless slaughter, even though painless, is immoral and degrading. Further, the fact that the killing is otherwise unlawful does not bring it within the statute.[26] A man may kill and eat his neighbor's sheep without being liable except for larceny. But needless,[27] wilful,[28] wanton[29] killing is prohibited. As

[22] Overloading and overdriving, People v. Tinsdale, 10 Ab. Pr. N. S. 374; Com. v. Wood, 111 Mass. 408; St. v. Comfort, 22 Minn. 271; People v. Brunnell, 48 How. Pr. 435; St. v. Avrey, 44 N. H. 392; Com v. Lufkin, 7 Allen, 579; St. v. Roche, 37 Mo. App. 480; St. v. Bosworth, 54 Conn. 1. Limitations of action, see, Reg. v. Paget, 53 J. P., 469.

[23] *cf.* St. v. Roche, 37 Mo. App. 480; People v. Brunnell, 48 How. Pr. 435; Com. v. Raymond, 97 Mass. 569.

[24] See art. 12, Crim. Law Mag., 377.

[25] Grise v. St., 37 Ark. 456; *cf.* Com. v. Curry, 150 Mass. 509.

[26] Jones v. St., 9 Tex. App. 178.

[27] Grise v. St., 37 Ark. 456; St. v. Bogardus, 4 Mo. App. 215; Com. v. Lewis, 140 Pa. St. 261; Hunt v. St. 29 N. E. Rep. 933 (Ind. App.)

[28] St. v. Simpson, 73 N. C. 269; St. v. Allison, 90 *Id.* 733; Thomas v. St., 14 Tex. App. 200.

[29] Thomas v. St. 14 Tex. App. 200; Davis v. St., 12 *Id.*

might be expected the cases are not in harmony as to the definition of these terms. In Grise v. St., *supra*, the killing of a trespassing pig was held justifiable. In Sosst v. St., 2 Ind. App. 586, it was held that "the fact that a dog is trespassing in a garden where he has trespassed before and that the owner of the garden believes that the dog will damage it do not justify him in killing the dog whether it was actually doing damage or not." In Daniel v. James, 2 C. P. D. 351, it was held that poisoning a trespassing dog was not an unlawful and malicious killing.[30] Dogs may be exterminated summarily when kept contrary to municipal regulations.[31] Pigeon-shooting contests are allowable.[32] It requires no citation to establish the fact that any animal may be killed for the reasonable use of man.

Cruelty or Torture.—"The cruelty intended by the statute is the unnecessary abuse of any animal." Budge v. Parsons, 3 B. & S. at p. 385. It must cause pain[33] and the offender must know it or be reasonably presumed to know it.[34] When inflicted for a useful purpose there is no offense. Spaying sows and castrating horses are justifiable.[35] Cutting combs of fighting cocks and the fighting itself are indictable.[36] In the exhaustive case of Ford v. Wiley, 23 Q. B. D. 203, after reviewing and criticising[37] numerous cases, it was decided that dishorning cattle is cruelty. Lord Coleridge, C. J., said: "Necessity to form an excuse under the statute does not mean, as I have explained, simply that the effect of an operation cannot be otherwise secured. There must be proportion between the object and the means.[38] Mutilation of horses and bulls is necessary and if properly performed, undoubtedly lawful, because without it in this country at least, the animals could not be kept at all. But to put thousands of cows and oxen to the hideous torments described in this evidence in order to put a few pounds into the pockets of their owners is an instance of such utter disproportion between means and object as to render the practice as described here not only barbarous and inhuman but I think clearly unlawful also." Hawkins, J., concurring, said: "Constant familiarity with unnecessary torture to and abuse of dumb animals cannot fail by degrees to brutalize and harden all who are concerned in or witness the miseries of the sufferers, a consequence to be scrupulously avoided in the best interests of civilized society."[39] These decisions give no hint that modern statutes

11; Ready v. St., 22 *Id.* 271; Tinsley v. St. (Tex. Cr. App.), 22 S. W. Rep. 39. Malice: Thompson v. St., 67 Ala. 106; Tatum v. St., 66 *Id.* 465; St. v. Avery, 44 N. H. 392; Regina v. Tivey, 1 Car. & K., 704; Brown v. St., 26 Ohio St. 176. Indictment: Com. v. Whitman, 118 Mass. 458; St. v. Brunner, 111 Ind. 98; St. v. Greenlees, 41 Ark. 353; Reg. v. Bullocks, 11 Cox C. C., 125; St. v. Woodward, 95 Mo. 129; Com. v. Thornton, 113 Mass. 457; Elmsley's Case, 1 Lew. C. C. 126; Com. v. Lufkin, 7 Allen, 579; St. v. Gould, 26 W. Va. 258; St. v. Haskell, 76 Me. 339; Benson v. St., 1 Tex. App. 6; Com. v. McClellan, 101 Mass. 34; Turner v. St., 4 Tex., App. 186; Grise v. St., 37 Ark. 456; Reid v. St., 8 Tex. App. 430; St. v. Watkins, 101 N. C. 702; Rembert v. St., 56 Miss. 280; Com. v. Brigham, 108 Mass. 457; Colier v. St., 4 Tex. App. 12; Darnell v. St., 6 *Id.* 482; Rose v. St., 1 *Id.* 400. Former acquittal, Irvin v. St., 7 Tex. App. 78.

[30] Trespassing animals: Hodge v. St., 11 Lea (Tenn.), 528; St. v. Labounty, 63 Vt. 374. Reis v. Stratton, 23 Ill. App. 314; St. v. Butts, 92 N. C. 784; St. v. Painter, 70 *Id.* 70; St. v. Allen, 69 *Id.* 23; St. v. Staton, 66 *Id.* 640; St. v. Hill, 79 *Id.* 656; Bass v. St., 63 Ala. 106; Ashworth v. St., 63 Ala. 120; Branch v. St., 41 Tex. 622; Stephans v. St., 3 South. Rep. (Miss.) 458; Lott v. St., 9 Tex. App. 206; Thomas v. St., 14 *Id.* 200; Thompson v. St., 67 Ala. 106; Dunning v. Bird, 24 Ill. App. 270; Lipe v. Blackwelder, 25 *Id.* 119; *cf.* Nehr v. St., 35 Neb. 638.

[31] Julienne v. City of Jackson (Miss.), 10 South. Rep. 43; Blair v. Forehand, 100 Mass. 136; Morey v. Brown, 42 N. H. 373. As to constitutionality of cruelty to animal acts generally, see, Stage Horse Cases, 15 Abb. Pr. N. S. 51; King v. Hays (Me.), 6 New Eng. Rep. 6; Walker v. Special Sess., 4 Hun (N. Y.), 441; Noffziger v. McAllister, 12 Kan. 315.

[32] St. v. Bogardus, 4 Mo. App. 215; Com. v. Lewis, 140 Pa. St. 291; *cf.* St. v. Porter (N. C.), 16 S. E. Rep. 915; Pitts v. Millar, L. R. 9 Q. B. 380.

[33] St. v. Pugh, 15 Mo. 510; *cf.* Com. v. Curry, 150 Mass. 509.

[34] Stage Horse Cases, 15 Abb. Pr. N. S. 51; St. v. Roche, 37 Mo. App. 480.

[35] Lewis v. Fermor, 18 Q. B. D. 532.

[36] Murphy v. Manning, 2 Ex. Div. 307; Com. v. Tilton, 8 Met. 232; Squires v. Whisken, 3 Comp. 140; Clark v. Hague, 2 Ellis & E. 281; Budge v. Parsons, 3 B. & S. 382.

[37] Benton v. Wilson, 15 Justiciary cases, 84 (Scotch); Callaghan v. Soc., 16 L. R. (Ir.) 325.

[38] *cf.* St. v. Pugh, 15 Mo. 509; People v. Stakes, 1 Wheel. (N. Y.) Cr. Cas. 111; Com. v. Turner, 145 Mass. 296; Brady v. McArgle, 15 Cox C. C. 516; St. v. Benner, 111 Ind. 98; Davis v. Soc., 16 Ab. Pr. N. S. 73, on appeal, 75 N. Y. 362; Stage Horse Cases, 15 Ab. Pr. N. S. 51; Cornelius v. Grant, 7 Scotch Sess. Cas. 4th Ses. Just. 13; Westbrook v. Field, 51 J. P. 726; Adcock v. Murrell, 54 J. P. 776; Reg. v. McDonagh, 28 L. R. Ir. 204; Swan v. Saunders, 14 Cox. C. C. 566; St. v. Bosworth, 54 Conn. 1; McDonald v. St., 5 Tex. App. 475; People v. Tinsdale, 10 Abb. Pr. N. S. 514; Powell v. Knights, 38 L. T. 607; Everitt v. Davies, 38 L. T. 360; Com. v. Thornton, 113 Mass. 457.

[39] In Reg. v. McDonagh, 28 L. R. Ir. 204, the court refused to follow this decision and held dishorning legal.

have endowed animals with legal rights. Although the courts may differ as to what is a "wanton" killing, and what "unnecessary" cruelty, they all treat the subject from the standpoint of humanity and allow a man a dominion over other "living creatures" that cannot be reconciled with the idea that the latter have any rights—either to liberty, life or security from pain. The conclusion therefore must be that cruelty to animals is illegal, not because of its effect on the animals but because of its effect on men.

Baltimore, Md. OSCAR L. QUINLAN.

PARTY WALL—RIGHT TO REMOVE.

PUTZELL V. DROVERS' & MECHANICS' NAT. BANK.

Court of Appeals of Maryland, January 12, 1894.

A joint owner in a division wall may remove it, and erect a new one, if the work is done in a reasonable time, and the co-owner is reimbursed for necessary expense in protecting his property during the change.

BRYAN J.: Selig G. Putzell filed a bill in equity against the Drovers' & Mechanics' National Bank of Baltimore. It was alleged that the defendant, without right or justification, was about to tear down the rear wall of the complainant's dwelling house, and thereby render it untenantable, and do him irreparable damage. The bill prayed an injunction to restrain the defendant from proceeding as alleged, and it was accordingly granted before answer. There was also a prayer for general relief. After answer the defendant moved a dissolution of the injunction. Testimony was taken on both sides and when the cause came to final hearing the injunction was dissolved, and the bill dismissed. Complainant appealed.

We think that a statement of the material facts of the case as they appear to us will sufficiently show the grounds of our opinion, without the necessity of a discussion of the testimony of the different witnesses. Putzell, the complainant, is the owner of a leasehold interest for 99 years, renewable forever, in a lot of ground in the city of Baltimore, on the west side of Eutaw street, between Fayette and Lexington streets. He acquired this property in the year 1866. For many years before his purchase, and ever since then, there has been on this lot a substantial brick dwelling house, which extended back to the westernmost boundary. The Drovers' & Mechanics' Bank, in the year 1888, became the owner of a leasehold interest in a lot of ground fronting on Fayette street, and running back northerly to Marion street, and binding, for a portion of its easterly line, on the westernmost boundary of Putzell's lot. It is not distinctly stated in the record, but this leasehold interest is evidently for 99 years, renewable forever. The bank's lot and Putzell's lot are separated by a division brick wall, which, by the measurements proved in the case, is shown to be built partly on the ground of one of these parties, and partly on the ground of the other. This wall has been standing for a very long time, certainly for more than 30 years before the transactions which are the subject of complaint in this case. As far as we can ascertain from the testimony, Putzell's house, as originally built, had this division wall as its rear wall, but the rear wall was not built higher than the top of the division wall. In 1870, Putzell put an additional story on the back building, placing its rear wall on the top of the division wall. This division wall was used by the owners and occupants of the lot now owned by the bank for the purpose of designating the boundary line between it and the Putzell lot. There was evidence of the use of it, also for a series of years, as a support for the frame of a grape arbor. The bank, in the year 1892, commenced the erection of a large six-story building for the purposes of its business, and in the prosecution of the work proposed to take down the entire wall separating the two lots, and erect on the same line another wall of sufficient strength and thickness to support the new building, not encroaching on Putzell's lot, and offering to give him the benefit of the new wall as a partion wall for the benefit of any building to be erected on his lot. The question in the case is whether this action on the part of the bank would be a legitimate exercise of its rights of property.

No one seems to know when the wall in question was built. In all probability, the time was beyond the limit of living memory. There is some reason to think so from the fact that the deeds which created the leasehold interests in these lots were executed towards the close of the last century, and early in the beginning of the present. It seems to have been erected for the purpose of making the boundary between the lots, and to have been always used for that purpose. The soil of the respective owners was covered by it; and this was the use of his soil which each owner elected to make for his own benefit. Each one owned the portion of the wall which was on his own ground. There seems to have been no cessation of the use of it, in the way in which is was intended to be used,—that is, to mark the boundary line. There was no ouster of the possession of the soil. Each coterminous proprietor owns the portion of the wall which rested on his own ground, as he had continued to own it from the beginning and he has actual and beneficial possession of the soil by reason of the occupation and use of it by means of his portion of the wall. Surely, there could not be a more distinct and unequivocal exercise of the right of ownership than to build on one's own land a house or a wall, and to use it continuously for the purposes to which it was suitable. It is hardly necessary to refer to

decided cases, but one case was cited in the argument having such peculiar features that it may well be mentioned while we are considering this subject. The question was about the title to certain property in the city of London, which was occupied by a brick house. In the south wall of the house there was a stone tablet bearing an inscription which stated that when New street was widened, nearly a century before the time in question, this wall had been built by the East India Company, and that it remained their property. The house had been claimed by the plaintiffs and their predecessors in title, and occupied by their tenants, for 38 years, and during all that time there had been no acknowledgment of the title of the East India Company. Upon these facts the question of adverse possession was presented. The court, however, speaking of the inscription on the tablet, said: "It was, in truth, a statement on the wall itself that the wall, forming a substantial part of the property, had been erected by, and was the boundary wall of, the adjoining owner, for the East India Company of course continued to be the owner of the soil of the street, although dedicated to the public. There was nothing therefore, whatever, to lead to the presumption that any title had been gained adverse to that of such adjoining owner by adverse possession. Where there is a boundary wall, and that boundary wall remains undisturbed, and an inscription is allowed to remain on it, which states that it is the boundary wall of the adjoining proprietor, it seems to us idle to suppose that any question of the statute of limitation, or of adverse possession, or of cesser of possession could properly arise. It was therefore manifest that the wall belonged to the East India Company." Phillipson v. Gibbon, 6 Ch. App. 428.

We pass by the use of the wall as a support for the grape arbor, because that was significant only as tending to show an act of ownership, and we think that the ownership is fully maintained on the grounds already stated. But, although there was no amotion of the possession of the owners of the bank lot, it does not follow that Putzell had not acquired some rights to the use of the division wall. He had used this wall for more than 20 years as a support to his house; the enjoyment of it for this purpose had been notorious, peaceable, uninterrupted, and, "as of right." Under these circumstances, the law considers that he had a prescriptive title to the use of it in the manner in which he had enjoyed it. It is conducive to the peace of society that claims of right which for a long time have been acquiesced in and regarded as settled should be protected by the law, and the space of 20 years has been adopted as the period for ripening claims of this description into titles. Putzell used this division wall as the rear wall of the lower part of his house, and also used it as a support for the wall of an additional story. To the extent of such use his title is clearly established. We have said that this use was not an ouster of the coterminous owner from the possession of the soil. It was an easement for the support of the rear wall of the house. By the common law, easements must be established against an owner of an estate of inheritance. Although they may arise from user, such user is regarded by fiction of law only as evidence of a grant; and, as the right claimed is of a permanent nature, it is said that the supposed grant could have been legally made only by a party who could impose a permanent burden on the servient tenement,—that is to say, by the owner of an estate of inheritance. But in this case we have no concern with this principle of the common law; and need not inquire into its application, or into seeming modifications of it. Both of the lots in question are held under leases for 99 years, renewable forever; and it is well settled that the holders of such leases have the absolute control and management of the property. They usually have, in point of fact, far more valuable interests in it than the reversioner who holds the estate of inheritance. Crowe v. Wilson, 65 Md. 481, 482, 5 Atl. Rep. 427. The bank retained all its rights in the division wall which are not inconsistent with the enjoyment of the easement. It was bound to permit it to be used as a support for Putzell's house in the accustomed manner; but this is the limit of its obligation. It would be unreasonable to deny to it the rights to improve its own property according to its interests and inclinations, provided it did not infringe the rights of other persons. In fact, the wall which it proposed to take down was insufficient to support the building which it desired to erect. If this should be taken down, and another larger and stronger one built in its stead, it would thereby exercise its own legitimate rights of property, and, if it gave to the adjoining house the same right of support in the new wall which it had in the old one, it would not injure its neighbor. This seems to us the just settlement of this controversy. Putzell may be put to some inconvenience while the building is going on, but this is one of the unavoidable consequences of living in a closely built city. We have said that each portion of this division wall belonged in severalty to the proprietor on whose ground it stood; but, even if these proprietors had been tenants in common of this wall, the result would not have been practically different. In Bank v. Stokes, 9 Ch. Div. 72, Sir George Jessel cites, with marked approval, Cubitt v. Porter, 8 Barn. & C. 257. He quoted as follows from the opinion of Mr. Justice Bayley: "There is no authority to show that one tenant in common can maintain an action against the other for a temporary removal of the subject-matter of the tenancy in common, the party removing it having at the same time an intention of making a prompt restitution. It was not a destruction. The object of the party was not that there should be no wall there, but that there should be a wall there again as expeditiously as a wall could be made." And in a subsequent part of his opinion he says: "As I have read the law from the statements of eminent judges, he [that

is a tenant in common] has a right to pull down when the wall is neither defective nor out of repair, if he only wishes to improve it, or put up a better or handsomer one." Chancellor Kent was of the same opinion. In the following passage from his Commentaries (volome 3, p. 437) he assumes the right as settled: "If there be a party wall between two houses, and the owner of one of the houses pulls it down in order to build a new one, and with it he takes down the party wall belonging equally to him and his neighbor, and erects a new house and new wall, he is bound, on his part, to pull down and reinstate it in a reasonable time, and with the least inconvenience." And from the remarks of Chief Justice Bartol in Glenn v. Davis, 35 Mo. 219, it may be readily inferred that the opinion of this court was the same. The allegations of the bill of complaint were sufficient to give a court of equity jurisdiction, and they justified the preliminary injunction. The complainant has not proved the precise title to the wall which he alleged, although he has proved a title to a portion of it, and an interest in the other portion by way of easement. For the reasons which we have stated, we approve of the dissolution of the injunction, and to that extent the decree below will be affirmed. But the right to take down the wall is not absolute and unconditional; it is qualified in the manner which we have explained in a previous part of this opinion. The bank is bound to finish the division wall at its own expense, and to allow to Putzell's house the same right of support which it had in the old wall, and to idemnify him for the necessary expenses which he had incurred, and may incur, in protecting his property from the consequences of the removal of the old wall. For failure to do these things it would be liable to an action at law. But as a court of equity had jurisdiction of this case, although it could not give the precise relief prayed it was proper, according to well-settled principles, to do complete justice between the parties, and thus avoid multiplication of suits in the future. It ought to have retained the bill for the purpose of settling and adjudicating any claim which may arise in favor of Putzell against the bank, in accordance with the principles which we have stated. We disapprove of that portion of the decree which dismisses the bill. Decree affirmed in part, and reversed in part, and cause remanded for further proceeding; the costs in this court to be equally divided between the parties.

NOTE.—In general each owner of a party-wall must so deal with it as not to impair any right which the other may have. Montgomery v. Masonic Hall, 70 Ga. 38; Moody v. McClelland, 39 Ala. 45; Dowling v. Hennings, 20 Md. 179; Hoffman v. Kuhn, 57 Miss. 746. In the construction of a party-wall, the one who builds it is under a duty to erect it in a proper and skillful manner, and if he fails to do so, he is liable for the resulting damage. Gorham v. Gross, 125 Mass. 232; Glover v. Mersman, 4 Mo. App. 90; Gilbert v. Woodruff, 40 Iowa, 320; Cutter v. Williams, 3 Allen (Mass.), 196. Either party is at liberty to make any change in a party-wall, by underpinning or increasing its height, that he sees fit, provided that, in so doing, he does not interfere with or impair the rights of the other owner. The party making the change is liable for any damage which may result therefrom. The party making such change is obligated to observe care not to occasion injury to the adjoining owner, but the authorities generally seem to hold that in so far as he can use the party-wall in the improvement of his own property without injury to such wall or the adjoining property there is no good reason why he may not be permitted to do so. Field v. Leiter, 118 Ill. 17; Graves v. Smith (Ala.), 6 South. Rep. 308; Montgomery v. Masonic Hall, 70 Ga. 38; Quinn v. Morse, 130 Mass. 317; Matthews v. Dixey (Mass.), 22 N. E. Rep. 61; Dowling v. Hennings, 20 Md. 179; Brooks v. Curtis, 50 N. Y. 639; Dauenhauser v. Devine, 51 Tex. 480; Andrae v. Haseltine, 58 Wis. 395. If a party desiring to erect a building find the adjoining wall too weak to support the building which he is about to erect he may tear down such wall and replace it with a stronger one. In so doing he must take great care to prevent any more damage than is absolutely necessary. Gettworth v. Hedden, 30 La. Ann. (Pt. 1) 30; Standard Bank 9 Ch. Div. 68. One owner of a party-wall may build it to a greater height to support an addition to his building, doing no injury to his co-owner; and the mere fact that in carrying up the wall he violates a building act will not render him liable to such co-owner. Everett v. Edwards, 149 Mass. 588. Either owner may repair a party-wall, and after giving due notice of his intention to the adjoining owner he is not liable for any damages resulting from such repairs if they be made with dispatch and without negligence Moore v. Rayner, 58 Md. 411; Hoffman v. Kuhn, 57 Miss. 746; Crashaw v. Summers, 56 Mo. 517; Schile v. Brokhahus, 80 N. Y. 614; Sanders v. Martin, 2 Lea (Tenn.), 213. An adjoining owner of a party-wall has a right to increase its height, but in so doing is liable for any injury to the adjoining building even though the addition is being built by a contractor, and the damage results from a wind storm which causes the wall to fall. Negus v. Becker, 22 N. Y. Supp. 986, One of the joint owners of a party-wall who desires to erect a new building requiring a deeper foundation than his old building has no right against the objection of the other owner, to tear down the party-wall and rebuild it merely because so doing would render it more convenient and less expensive for him in putting in the foundation for his new building where such party-wall is not delapidated, and affords a sufficient support for his present building, as well as for the building of the other owner. Partridge v. Lyon, 21 N. Y. S. 848. See article on "Party-Walls," by F. M. Bixby in 18 Cent. L. J. 122.

CORRESPONDENCE.

LIABILITY OF PROPRIETOR OF STORE FOR NEGLIGENCE OF CLERK.

To the Editor of the Central Law Journal:

A is the owner of a hardware store and keeps for sale in stock pistols; his son B about 16 years of age is in his employ as clerk in the store. C is also employed by A to sell and put up wind pumps, and in the prosecution of his work is about the same store and shows the pumps and solicits purchasers but does not do the work of selling other wares in stock. While C is engaged in the store room where he was entitled

to be talking with a customer and trying to sell a pump, B reaches in the show case and draws a revolver which he at the time supposes to be empty, presents it toward C and pulls the trigger. The pistol proves to be loaded and C is shot and injured for life. Is A liable for the negligence of his son B?

X.

BOOK REVIEWS.

LAWYERS' REPORTS, ANNOTATED, BOOK XX.

We have frequently taken occasion to commend this series of reports, issued by Lawyers' Co-operative Publishing Co., of Rochester, N. Y. In the first place the selection of cases is admirable, great care and discrimination being apparently exercised by the editor in that regard. But if nothing more, the able and exhaustive notes which are appended to a large majority of the reported cases would make the series valuable to the practitioner. Indeed we feel entirely justified in the statement that there is to-day no set of current reports containing a selection of cases which in all respects is as useful to the practitioner and we conscientiously commend it as worthy a place in every good law library.

BOOKS RECEIVED.

A Treatise on the Law of Railroads. By H. G. Wood, Author of "The Law of Limitations," "Nuisances," etc. Second Edition. By H. D. Minor, of the Memphis Bar. In three volumes. Boston. Boston Company, 1894.

The American and English Encyclopædia of Law. Compiled under the Editorial Supervision of Charles F. Williams, Assisted by Thomas J. Michie. Vol. XXIII. Nothport, Long Island, N. Y.: Edward Tompson Company Law Publishers. 1893.

A Treatise on the Law of Mortgages on Personal Property. By Leonard A. Jones, Author of Treatises on "Mortgages," "Railroad Securities," "Pledges," and "Liens." Fourth Edition. Revised and Enlarged. Boston: Houghton, Mifflin and Company. New York: 11 East Seventeenth Street. The Riverside Press, Cambridge, 1894.

The American State Reports, Containing the Cases of General Value and Authority Subsequent to those Contained in the "American Decisions" and the "American Reports," decided in the Courts of Last Resort of the Several States. Selected, Reported and Annotated, by A. C. Freeman and the Associate Editors of the "American Decisions." Vol. XXXIV. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers, 1894.

Digest of Insurance Cases Embracing the Decisions of the Supreme and Circuit Courts of the United States, of the Supreme and Appellate Courts of the Various States and Foreign Countries, Upon Disputed Points in Fire, Life, Marine, Accident, and Assessment Insurance, and Affecting Fraternal Benefit Orders. Reference to Annotated Insurance Cases in Editorials in Law Journals on Insurance Cases. For the year Ending October 31, 1892. By John A. Finch, of the Indianapolis Bar. Indianapolis: The Bowen-Merrill Co., 1893.

The American Corporation Legal Manual, a Compilation of the Essential Features of the Statutory Law Regulating the Formation, Management and Dissolution of General Business Corporations in America (North, Central and South), England, France, Germany, the Netherlands, Italy, Russia and Spain. Also a Synopsis of the Patent, Trademark and Copyright Laws of the World. Prepared Expressly for this Work by Members of the Bar in the Different Localities, for the Use of Attorneys, Officers of Corporations, Investors and Business Men. Vol. 2.—1894 (to January 1, 1894), Edited by Charles L. Borgmeyer, Member of the New Jersey Bar, Newark, N. J. 1894. Honeyman & Company, Law Book Publishers, Plainfield, New Jersey, U. S. A.

HUMORS OF THE LAW.

An old negro being on trial, his lawyer challenged a number of the jury who, his client said, had a prejudice against him. "Are there any more jurymen who have a prejudice against you?" inquired the lawyer. "No sah, de jury am all right, but I want to challenge de judge."

On an argument before the Supreme Court of N. C. one day in years past, Mr. Lanier, a very learned and very thorough arguer of his causes, was going "to the bottom of the reason of things," when Chief Justice Pearson interrupted him: "Brother Lanier, you should presume that this court at least understands the elementary principles of law. You need not discuss *them*." Mr. Lanier, blandly raising his spectacles with a placid smile, replied with great deliberation, "So—I did—your—Honors, at the last term of the court, and I—lost—my case—by—it." "Umph," said the Chief Justice, as he slided a little lower down in his seat.

At a recent meeting of the Law Students' Society in London, the subject for the evening was a debate on the following moot point: "A, a bachelor, sends B, a spinster, a valentine, in which the following words were printed:—

'I have loved you all my life,
So will you be my own dear wife?'

And she answers in the affirmative. Is there a sufficient contract on which to base an action for breach of promise of marriage?"—Mr. Hoyle opened in the affirmative, and Mr. Marshall took the negative.—All present joined in the debate, and the chairman having summed up the various arguments, the question was decided in the negative by a majority of two.

It so happened that a certain well-known lawyer, who for narrative purposes shall be nameless, came into the official presence of a learned judge whose cognomen shall likewise be discreetly veiled. The lawyer did not arrive alone. He was accompanied by a large number of previously encompassed drinks, and in the language of the pave, a symphonic "brannigan" was concealed about his person. "Mr ——," remarked the Solon, "I am astonished to see you in such a condition." "Dishun?" sighed the lawyer, "Wazzer matter?" "There is no need of explaining, sir." "Yesher is, You 'tack my condishun—wazzer matter wish it?" "To be plain, Mr. ——, you are very drunk." "Y'r honor," responded the inebriate one, after a moment's pause, "I've been prac'sing here for fifteen years, un that's the firsh c'rect decishun I ever heard in this court." It cost him something for contempt.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION — Executors—Power.—An executor has no authority as such to go into debt and bind the estate by giving notes; nor is such authority deducible from an express power to sell and reinvest assets; and therefore no action at law can be maintained on such notes, though in equity the estate might be held, not on the contract, but to the extent of the benefit actually conferred.—BOGGS v. WANN, U. S. C. C. (Ohio), 58 Fed. Rep. 681.

2. ADMINISTRATION — Failure to File Report.—The facts that an administrator of a deceased person filed an inventory of the personal property belonging to the estate on October 3, 1882, and failed to at any time thereafter make annual or final settlement of the estate prior to his death, which occurred in January, 1889, do not alone show a wrongful conversion of such estate, or any part thereof, by the administrator to his own use.—ALLEN v. BARTLETT, Kan., 34 Pac. Rep. 1048.

3. ADMIRALTY—Maritime Liens.—There can be no delivery to the ship, in the maritime sense, either of supplies or cargo, so as to bind her *in rem*, until the goods are either actually put on board the ship, or else brought within the immediate presence or control of her officers.—THE VIGILANCIA, U. S. D. C. (N. Y.), 58 Fed. Rep. 698.

4. ADVERSE POSSESSION—Color of Title.—Possession of land by an adverse occupant for more than 15 years, which is actual, notorious, continuous, and exclusive, will give title thereto, although such possession is entirely destitute of color of title.—ANDERSON v. BURNHAM, Kan., 34 Pac. Rep. 1056.

5. APPEAL—Non-suit.—A non-suit entered by plaintiff is not a final judgment from which an appeal lies.—MALLORY v. TAYLOR, Va., 18 S. E. Rep. 438.

APPEAL—Writ of Error—Supersedeas.—The necessity, to a suit in error, of lodging the writ of error in the court rendering the judgment which it is sought to have reviewed, is not supplied by an order of that court allowing such writ, and directing that it shall operate as a *supersedeas* to the judgment, and a compliance with the provisions of the order as to the *supersedeas* bond.—KNIGHT v. TOWLES, Fla., 14 South. Rep. 91.

7. ASSIGNMENT—Insurance Policies.—One who, being indebted to a bank, and also to a firm, had assigned to the latter his interest in certain fire insurance policies, prosecuted actions thereon in his own name, testifying that he was solely interested therein. Previously, he had refused to assign the policies to the bank, but informed its officers that when he collected the money he would deposit it, and the bank could pay itself; and the bank, having no knowledge of the assignment, and relying on these statements, granted him further credit, and made him other loans. Subsequently, after a settlement of certain of the actions, the attorney for the assignor, without his knowledge, or that of the assignees, deposited the proceeds in the bank: Held that, by the assignment, the entire beneficial interest in the policies vested in the assignees, and entitled them, as against the bank, to the proceeds of the settlement.—FARMERS' & MERCHANTS' BANK OF CLAY CENTER v. FARWELL, U. S. C. C. of App., 58 Fed. Rep. 633.

8. ASSIGNMENT FOR BENEFIT OF CREDITORS. — An assignee for the benefit of creditors should not be charged interest on funds of the estate, merely because he deposits them with his own in his own name, where he does not draw on the account so as to infringe on the funds, and there is no loss to the funds.—IN RE BARNES, N. Y., 35 N. E. Rep. 653.

9. ASSIGNMENT FOR BENEFIT OF CREDITORS. — The Ohio statute relating to assignments for the benefit of creditors merely prescribes the method of enforcing and administering the trust after it is created, and the validity and character of the assignment is to be determined by the common law.—SCHRODER v. TOMPKINS, U. S. C. C. (Ind.), 58 Fed. Rep. 672.

10. BENEVOLENT SOCIETIES—Contracts. — When persons contract with a committee of a post of the Grand Army of the Republic, and make their contract with them as such, they cannot maintain a suit against them as partners on the ground that the contract was beyond the power of the post.—PAIN v. SAMPLE, Penn., 27 Atl. Rep. 1107.

11. BOND—Construction.—On seizure of B's property under distress for rent, defendant executed a penal bond for a certain sum to plaintiff, B's landlord, conditioned to be void if B should keep all his property in his house, and remove none of it before a specified date: Held, not to bind defendant to so control B's actions that he would not, on the date specified, or at any previous time, prevent access to or seizure of such property for the rent. — CRAWFORD'S EX'R v. EVANS, Penn., 27 Atl. Rep. 1105.

12. CARRIERS.—A railroad company is not bound, as a part of its contract for the transportation of a traveler, who is employed as a traveling salesman for a trading firm, to carry as his personal baggage a case of sample merchandise belonging to his employers; and where it receives and checks such case without knowledge of its contents or ownership, a part of which is afterwards stolen from its baggage room without negligence on the part of the company, it is not liable to the owners for the value thereof. — SOUTHERN KAN. RY. CO. v. CLARK, Kan., 34 Pac. Rep. 1054.

13. CARRIERS—Contract of Affreightment—Where, in reply to inquiry of its local agent about freight rates, defendant railroad company's general agent quotes a rate of 89½ cents per hundred, which by some error is received by the local agent as 69½ cents, and is so quoted to plaintiffs, who accept such rate, without knowledge of the mistake, there is a valid and binding contract between plaintiffs and defendant, under which the latter is bound to ship plaintiffs' freight at the rate quoted them by the local agent.—BORDEN v. RICHMOND & D. R. CO., N. Car., 18 S. E. Rep. 892.

14. CARRIERS OF GOODS—Connecting Carriers.—Where goods are delivered to a carrier for transportation to a point beyond its own line under a through bill of lading, which stipulates against liability for injury beyond its own line, and the goods are in a damaged condition when delivered by the connecting carrier to the consignee, the presumption is that the receiving carrier delivered them to the connecting carrier in good condition, and the presumption must be overcome before the consignor can recover for such damage from the receiving carrier.—LOUISVILLE & N. R. CO. v. JONES, Ala., 14 South. Rep. 114.

15. CARRIERS OF GOODS — Damage by Fire.—Where the bill of lading stipulates against the liability for damages by fire, a shipper cannot recover for goods destroyed in a fire not shown to have been caused by the company's negligence, on the ground that the company had negligently delayed to forward the goods, and had left them on the side track, where they caught fire; such delay not being the proximate cause of the injury.—REID v. EVANSVILLE & T. H. R. CO., Ind., 35 N. E. Rep. 703.

16. CARRIERS OF LIVE STOCK—Defects in Car.—The defect in a car furnished to transport horses, that the side slats are so far apart as to allow horses to get their feet through them, is not so apparent to the shipper loading his horses on the car as to convict him of negligence.—UNION PAC. RY. CO. v. RAINEY, Colo., 34 Pac. Rep. 986.

17. CONFLICT OF LAWS — Married Woman—Assignment of Life Insurance Policy.—The laws of New York govern the validity of an assignment by a married woman in New York of a life insurance policy issued by a Massachusetts corporation. — MILLER v. CAMPBELL, N. Y., 35 N. E. Rep. 651.

18. CONSTITUTIONAL LAW — Power of Governor — Removal of Officer. — Const. art. 4, § 6, which provides that the governor "may remove such officer for incompetency, neglect of duty, or malfeasance in office," applies only to officers whose offices are established by the constitution, and to officers whose offices are created by law, but whose appointment or election is not otherwise provided for; and does not apply to an officer whose office is created by a statute which provides for the appointment of the officer, and also for his suspension and removal, by the governor, for cause stated in writing, but not for political reasons. — TRIMBLE v. PEOPLE, Colo., 34 Pac. Rep. 981.

19. CONTRACTS—Action by Assignee.—The nineteenth section of the practice act, as amended by the act approved March 4, 1890 (Laws 1890, p. 24), does not make assignable a part of a contract, chose in action, or other matter covered by its terms, so that the assignee of such part may sue thereon in his own name at law, at least without the consent of the other contracting party.—OTIS v. ADAMS, N. J., 27 Atl. Rep. 1092.

20. CONTRACT — Pleadings. — Where an action of *assumpsit* is brought on an entire contract under seal, in which the covenants are dependent, and the pleader sets forth the contract in a special count, it is not sufficient for the plaintiff to aver his readiness and willingness to perform the condition precedent contained in the contract, but he must go further and show a sufficient legal excuse for his non-performance. —JONES v. SINGER MANUF'G CO., W. Va., 18 S. E. Rep. 478.

21. CONTRACTS — Work with Legislature. — While a contract to do lobbying is illegal, one to draft bills, explain them to members of the legislature, and request their introduction is not. — CHESEBROUGH v. CONOVER, N. Y., 35 N. E. Rep. 633.

22. CONTRIBUTION BETWEEN SURETIES.—Where a suit in equity is brought by one or more sureties against their cosureties to compel contribution, and a tract of land is sought to be sold as the property of one of said cosureties, which is claimed by the wife of said cosurety as having been purchased and paid for by her, although the title remains in her vendor, it is error to decree a sale of said tract of land so claimed by said wife without making said vendor a party to the suit. — HOLSBERRY v. POLING, W. Va., 18 S. E. Rep. 485.

23. CORPORATIONS—Contracts. — The fact that a railroad company and a construction company have mainly, though not entirely, the same officers and stockholders, does not render them legally identical, but merely requires a more careful scrutiny of their dealings with each other, where the interests of outside parties are affected. — DAVIDSON v. MEXICAN NAT. R. CO., U. S. C. C. (N. Y.), 58 Fed. Rep. 653.

24. CORPORATION—Dissolution.—Under the Minnesota statute (Gen. St. 1878, ch. 34, § 416) declaring that corporations whose charters expire or are annulled shall continue bodies corporate for three years for the purpose of settling their concerns, disposing of and conveying their property, and dividing their capital stock, a railroad company, whose charter is annulled by judicial decree, has power within the three years to convey its lands to a trustee in trust to wind up its business.—HANAN v. SAGE, U. S. C. C. (Minn.), 58 Fed. Rep. 651.

25. CORPORATIONS—Dissolution — Equitable Jurisdiction.—The Circuit Court has no inherent power, as a court of equity, at the suit of domestic shareholders, to dissolve an English mining company, owning and operating a mine in the United States, and to wind up its business operations; nor has it any such power under the act of parliament known as the "Companies Act 1862." — REPUBLICAN MOUNTAIN SILVER MINES v. BROWN, U. S. C. C. of App., 58 Fed. Rep. 644.

26. CORPORATIONS—Powers of Officers.—The authority of an officer to bind a corporation in the management of its ordinary business, with the knowledge of the members and directors: Held, not to be shown by a resolution or other written evidence, but may be fairly implied. There being no proof nor allegation of fraud or unfair dealing, the plaintiff, a third person, cannot require an imputation of payment between creditors and a debtor to be changed, some time after it has been made, in compliance with a pre-existing agreement. — MERCHANTS' & FARMERS' BANK v. HERVEY PLOW CO., La., 14 South. Rep. 139.

27. CORPORATIONS — Transfer of Notes by Officer — Ratification.—A corporation formed to build a railroad became indebted to a bank. Without express authority, the president and treasurer, its active financial agents, transferred to such bank a note received on subscription to the capital stock of the railroad company. The directors in other instances had authorized the president to use collaterals for loans, and authorized the mortgaging of the company's lands for such purpose, and they knew of the indebtedness to the bank. Six of the nine directors, separately, signed a paper ratifying the transfer after it was made: Held, that such transfer was ratified by the corporation.—BIBB v. HALL, Ala., 14 South. Rep. 98.

28. COURTS — Elevator in Courthouse. — Where the elevator in a courthouse is the principal means of reaching the Circuit Court rooms, the court may order the person put in charge of the elevator by the county commissioners to run it during the sessions of the court, and on his refusal to obey the order, or on a refusal by the county commissioners to continue to run the elevator, the court may direct the sheriff to take charge of the elevator and operate it.—BOARD OF COM'RS OF VIGO COUNTY v. STOUT, Ind., 35 N. E. Rep. 683.

29. CRIMINAL ASSAULT—Intent.—Where defendants—one with a pistol in his hand, one with a drawn sword, and one with a pistol in his pocket—went to the door of prosecutor's house, where he was sitting, with the admitted purpose of compelling him to leave his home and accompany them, and ordered him to go with them, they were guilty of an assault, though they were prevented from actually doing violence to his person by the interference of others. — STATE v. REAVIS, N. Car., 18 S. E. Rep. 388.

30. CRIMINAL EVIDENCE—Murder.—Where the State, in making proof of its case, puts in evidence the statements made to other persons by the accused of the circumstances of the killing, it is error for the judge to instruct the jury that "for obvious reasons said statements and admissions should be received with caution," where it cannot be said that the jury's understanding of the instruction was that caution should be exercised in his favor in weighing the statement.—MARSHALL V. STATE, Fla., 14 South. Rep. 92.

31. CRIMINAL LAW—Embezzlement—Ratification.—So far as the right of the State to pursue and punish a criminal is involved, the subsequent ratification of the act by the party injured will not bar a prosecution by the State.—STATE V. FRISCH, La., 14 South. Rep. 132.

32. CRIMINAL LAW—Manslaughter.—If one willfully inflict on another a gangerous wound, calculated to endanger and destroy life, and death ensue therefrom within a year and a day, he is not relieved of responsibility for the result by the fact that deceased might have recovered, but for the aggravation of the wound by unskillful treatment.—CLARK V. COMMONWEALTH, Va., 18 S. E. Rep. 440.

33. CRIMINAL PRACTICE—Arson.—An indictment for arson may charge the offense as willfully done or maliciously done, or each of the qualifying words may be used alone.—STATE V. NICKLESON, La., 14 South. Rep. 134.

34. CRIMINAL PRACTICE—Assault.—Under section 792, Rev. St., which denounces the offense of assaulting another by willfully shooting at him, an indictment is fatally defective which charges that "A B did willfully make an assault upon C D by shooting at him." The characterization of the assault is essential, and the indictment should followthe statute.—STATE V. LANGSTON, La., 14 South. Rep. 137.

35. CRIMINAL PRACTICE—Bail Bond—Validity.—A recognizance conditioned that the prisoner appear "on next Friday to answer the charge against him, and not to depart without leave of the court," is broken if the prisoner appear on said Friday, and, the trial having been commenced and adjourned to the next day, fail to appear on said next day.—ALLEN V. COMMONWEALTH, Va., 18 S. E. Rep. 437.

36. CRIMINAL PRACTICE—Forgery.—Code Crim. Proc. §§ 278, 279, provides that an indictment must charge but one crime and in one form, except that the crime may be charged, in separate counts to, have been committed in a different manner or by different means. Pen. Code, § 521, makes a person who utters a forged instrument guilty of forgery in the same degree as if he had forged it: Held, that an indictment may in one count charge the forgery of an instrument, and in another the utterance, on the same date and at the same place, of the same instrument.—PEOPLE V. ADLER, N. Y., 35 N. E. Rep. 644.

37. DEED — Boundaries.—The original owner of the premises granted to the tenant's predecessor a tract of marshland, bounded northwardly on a certain upland, a ditch dividing said marsh from said upland; and 11 years later conveyed to demandants' predecessors a certain piece of upland, bounded southerly on marshland, a ditch dividing said upland from said marshland. It appeared that the natural line of the upland was slightly concave, while the ditch was straight, leaving a narrow track of marsh between it and the natural line: Held, that, if the boundary as described by the deeds was doubtful, parol evidence of the acts of the adjoining owners was competent to establish the ditch as the boundary.—REYNOLDS V. BOSTON RUBBER CO., Mass., 35 N. E. Rep. 677.

38. DESCENT AND DISTRIBUTION.—Where one makes a deed of gift of land to his wife, and subsequently dies, leaving her all his property by will, she takes the land "by gift, devise, or descent" from "an ancestor," within the meaning of Rev. St. 1881, § 2472, providing, as to inheritance by kindred of the half blood, that if the estate shall have so come to an intestate, "those only who are of the blood of such ancestor shall inherit."—CORNETT V. HOUGH, Ind., 35 N. E. Rep. 699.

39. DESCENT AND DISTRIBUTION — Children.—B, deceased, in his lifetime was married three times. By his first wife he had one child. By his second wife he had one child. By his third wife, surviving him, he had five children. He died intestate in this State. At his death, one-half in value of his real estate, not necessary for the payment of his debts, descended in fee-simple to his surviving widow; the other half of his real estate descended to his seven children equally, being all of his children by his three wives.—CARLTON V. BURLEIGH, Kan., 34 Pac. Rep. 1050.

40. ESTOPPEL—Married Woman.—A married woman, who joins with her husband in a mortgage on land, the record title to which is in him, and who knows that the mortgagee is parting with his money in reliance on the husband's ownership, without making any objection, is estopped from afterwards asserting, as against the mortgagee, that she is the equitable owner of the land, and that the title was taken in her husband's name, without her knowledge and consent.—DUCKWALL V. KISNER, Ind., 35 N. E. Rep. 697.

41. EXECUTION — Supplementary Proceedings — Foreign Corporations.—Under Code Civil Proc. § 2463, which provides that this article (regulating proceedings supplementary to execution) does not apply where the judgment debtor is "a foreign corporation specified in section 1812 of this act, except in those actions or special proceedings brought by or against the people of the State," supplementary proceedings can be maintained against a foreign corporation having no place of business within the State, such corporation not being specified in section 1812.—LOGAN V. MCCALL, PUB. CO., N. Y., 35 N. E. Rep. 655.

42. FEDERAL COURTS—Citizenship.—In a suit to set aside a deed of trust made for the benefit of creditors it appeared that the plaintiff and the trustee were citizens of the same State, but that the beneficiaries under the deed, other than the plaintiff were citizens of another State: Held, that the trustee was an indispensable party to the suit, and that the Federal Court, therefore had no jurisdiction.—RUST V. BRITTLE SILVER CO., U. S. C. C. of App., 58 Fed. Rep. 611.

43. FRAUDS, STATUTE OF.—Defendant employed T to build and dig a celler on his premises, and plaintiff performed the work for T. In consideration of defendant's promise to pay him, plaintiff surrendered his claim against T, who, as a part of the same transaction, surrendered his claim against defendant: Held, that such promise was not within the statute of frauds, as it was a promise on defendant's part, for a good consideration, to pay to plaintiff defendant's own debt, and not T's debt which, by the agreement of the parties, had ceased to exist.—EDEN V. CHAFFEE, Mass., 35 N. E. Rep. 675.

44. FRAUDULENT CONVEYANCES.—Where there is testimony that at the time plaintiff purchased goods from an insolvent debtor he examined bills for the goods, which showed that the debts incurred in their purchase were not due, it should be left for the jury to say whether he had notice of facts creating suspicion of the seller's insolvency and intent to defraud, which, if followed up, would have led to knowledge thereof.—SMITH V. KAUFMAN, Ala., 14 South. Rep. 111.

45. FRAUDULENT CONVEYANCES — Creditor's Bill.—A decree declaring a deed made by an insolvent debtor and his wife void as against a judgment creditor, does not revest title in the grantor, so as to enable him or his family to establish a homestead therein to the prejudice of the creditor's claim.—MINOR V. WILSON, U. S. C. C. (Ga.), 58 Fed. Rep. 616.

46. FRAUDULENT CONVEYANCES—Husband and Wife.—In an action to declare a conveyance as in fraud of creditors, it is not necessary to determine as a question of fact the intention of the grantor, for, if the transaction constituted such fraud, the law supplies the intention or proceeds regardless of it.—KNAPP V. DAY, Colo., 34 Pac. Rep. 1008.

47. FRAUDULENT CONVEYANCES—Trusts.—A debtor conveyed to his creditor a stock of goods, at night, without preliminary negotiation, inventory taken, or value of stock in any way ascertained. The notes representing the debt were not due, and were not surrendered. The creditor swore that the purchase was absolute, but the debtor testified that the bill of sale and possession of the goods were given to secure the debt; and there was evidence of the grantee's admissions to the same effect. The grantee, when he took the bill of sale, paid the seller $150; but it appeared that the seller at the same time conveyed to him all his real estate, worth more than all his debts: Held, that the bill of sale was in fraud of other creditors, under Gen. St. § 1520, avoiding, as against existing creditors, all conveyances of chattels "made in trust for the use of the person making the same," without regard to the existence of intention to defraud.—INNIS v. CARPENTER, Colo., 34 Pac. Rep. 1011.

48. GARNISHMENT OF PARTNERSHIP.—Garnishment to secure a claim against a partnership cannot be maintained against a partner individually.—JONES v. LANGHORNE, Colo., 34 Pac. Rep. 997.

49. GUARANTY OF NOTE—Laches.—Defendant induced plaintiff to take a note seven months past due, by guarantying its payment. The maker, whom plaintiff knew, lived about 35 miles distant, and was in active business, having visible possession of property worth much more than the note, and was considered perfectly solvent. For four months after acquiring the note, plaintiff could have collected it by judgment, but he mislaid the note, and did not find it until after the maker's failure: Held, that it was a question for the jury whether plaintiff had been guilty of such want of diligence in collecting the note as would release defendant from liability as guarantor.—TISSUE v. HANNA, Penn., 27 Atl. Rep. 1104.

50. GUARDIAN AND WARD — Settlement. — Where a guardian takes his ward to live with him as a member of his family, there is no implied obligation on the ward's part to pay for board.—DOWN v. DOW, Ind., 35 N. E. Rep. 709.

51. HABEAS CORPUS—Arrest after Discharge.—Crim. Code, § 4787, providing that, where a person has been once discharged on *habeas corpus*, he cannot again be imprisoned or kept in custody for the same cause, unless he is indicted therefor, etc., does not apply where the first arrest and commitment was under a warrant void upon its face, and the second arrest and commitment is under a legal warrant.—EX PARTE CAMERON, Ala., 14 South. Rep. 97.

52. HOMESTEAD—Partnership Property.—Under Code, Civil Proc. div. 1 § 322 exempting a homestead to be selected by the "owner," a partner is entitled, as against creditors of the firm, to a homestead out of partnership property.—FERGUSON v. SPEITH, Mont., 34 Pac. Rep. 1020.

53. HUSBAND AND WIFE—Loss of Services—Contributory Negligence.—Where a wife cannot recover for personal injuries because guilty of contributory negligence, her husband cannot recover for the loss of her services consequent on such injuries.— WINNER v. OAKLAND TP., Penn., 27 Atl. Rep. 1111.

54. HUSBAND AND WIFE—Mechanics' Liens.—Where lumber is purchased by the husband in his own name, and used in improving his wife's property, and the credit is given solely to him, there is no lien therefor on the property.— HAWKINS LUMBER CO. v. BROWN, Ala., 14 South. Rep. 110.

55. HUSBAND AND WIFE —Necessaries.—If a wife is living apart from her husband, with his consent, or for a justifiable cause, he is liable for necessaries furnished her, whether by an individual on her application, or by a city or town under the laws for relief of paupers.—INHABITANTS OF TOWN OF STURBRIDGE v. FRANKLIN, Mass., 35 N. E. Rep. 668.

56. INTOXICATING LIQUORS - Keeping for Sale.—A person who has in his pocket, on his person, intoxicating liquor, which he intends to sell in violation of law, is guilty of "keeping" intoxicating liquors with intent to sell the same unlawfully.—COMMONWEALTH v. RYAN, Mass., 35 N. E. Rep. 673.

57. JUDGMENT—Scire Facias.—In a proceeding to revive a judgment by *scire facias* the *scire facias* must pursue the terms of the judgment, and a judgment on a writ of *scire facias*, awarding an execution in favor of different parties, for a different sum of money than that recited in the *scire facias*, will be set aside by the court on motion made at the same term at which it is rendered, and a new trial will be awarded.—ZUMBRO v. STUMP, W. Va., 18 S. E. Rep. 443.

58. JUDGMENT LIEN—Property Subject.—Where a will gives to the husband of the testatrix and his two minor children the whole estate, making him executor, and conferring upon him a power of sale and reinvestment, and he withdraws from the estate more than one third thereof, and devotes it to his own use, he has no interest in what remains, and a judgment thereafter rendered against him personally for his own debt has no lien thereon.—HARRISON v. BALDWIN, Ga., 18 S. E. Rep. 402.

59. LIBEL—Cruelty by Policeman. — A publication charging a police officer with treating a prisoner, making a desperate attempt to escape, in a merciless manner, by striking him a crushing blow on the neck, felling him to the ground, and shortly causing his death, is actionable.—O'SHAUGHNESSY v. NEW YORK RECORDER CO., U. S. C. C. (N. Y.), 58 Fed. Rep. 653.

60. LIFE INSURANCE—Conditions of Contract.—A provision in a life policy that none of the terms or conditions of the contract of insurance shall be waived except in writing, signed by the president, applies to conditions on the back of the policy, such conditions being, by provision on the face of the policy, made part of the contract, as fully as though recited in full over the signatures.—PORTER v. UNITED STATES LIFE INS. CO., Mass., 35 N. E. Rep. 678.

61. LIFE INSURANCE—Death of Beneficiary.—If a life insurance policy is taken out, and premiums paid, by the assured and the policy made payable at his death to his wife, and, in case of her decease during his lifetime, to her children by him, in such case, if all the beneficiaries named in the policy die before the death of the assured, such policy reverts to the assured, and at his death becomes subject to administration and bequest, the same as his other personal estate.—RYAN v. ROTHWEILER, Ohio, 35 N. E. Rep. 679.

62. LIMITATION—Decrees—Fraud.—An action to set aside a decree fraudulently substituted for another in a proceeding for determination of priority of water rights is not an action to determine such priority of rights, within Gen. St. §§ 1796, 1797, prescribing the time within which such an action may be brought after such a decree, but is an action for relief on the ground of fraud, required by section 2174 to be brought within a certain time after discovery of the fraud.—PECK LATERAL DITCH CO. v. PELLA IRRIGATING DITCH CO., Colo., 34 Pac. Rep. 988.

63. LIMITATION OF ACTIONS — Running of Statute against State.—Section 20, ch. 35, Code, 1868, abolished the common law rule that no time runs against the State, and made the State's right subject to statutes of limitations, the same as individual rights.—STATE v. MINES, W. Va., 18 S. E. Rep. 470.

64. MANDAMUS—Bill of Exceptions.—The trial judge will not be ordered to sign a bill of exception which states that witnesses for the defense had testified exonerating the accused, the judge having averred in his return that the statement does not comport with the facts proven at the trial, and that he is willing to sign a proper bill of exception.—STATE v. VOORHIES, La., 14 South. Rep. 117.

65. MASTER AND SERVANT—Defective Appliances.—In an action by an employee to recover for injuries resulting from the defective condition of the lock of a switch, plaintiff must show, by a fair preponderance of the evidence, that defendant knew of the condition of the lock, or by the exercise of ordinary care migh

have known it.—OHIO & M. RY. CO. v. HEATON, Ind. 35 N. E. Rep. 687.

66. MASTER AND SERVANT — Negligence of Master.—Plaintiff, a saw operator in defendant's factory, while cleaning snow from logs preparatory to sawing them, was ordered by defendant "not to take so much time in cleaning the wood, but go over it quickly," and, while sawing a log from which he had not cleaned the snow, his finger was cut by contact with the saw: Held, that such order did not establish negligence on defendant's part. — WANNER v. KINDEL, Colo., 34 Pac. Rep. 1014.

67. MEASURE OF DAMAGES—Wrongful Detention.—In an action by a farmer to recover possession of horses, wagon, and harness, and for damages for their wrongful detention, a charge that the measure of damages is "the value of the use or hire of the property while in possession of defendant from the time of demand" is prejudicial to defendant when unaccompanied by considerations of whether the property could have been constantly employed by plaintiff at a given rate of earnings, either by letting for hire or by employment at home and whether the gross earnings would have been diminished by expense for feeding and care.—BRUNELL v. COOK, Mont., 34 Pac. Rep. 1015.

68. MECHANIC'S LIEN. — In an action by a subcontractor to enforce a mechanic's lien, it appeared that the contractor abandoned the contract, and forfeited the final payment, unless the owner waived the forfeiture, under the terms of his contract, and elected to complete the work at the contractor's expense. The owner, in his life time, and his heirs, after his death, completed the building, and asserted no claim of forfeiture: Held, that plaintiff could enforce his lien on the surplus of the final payment over and above the cost of such completion.—OGDEN v. ALEXANDER, N. Y., 35 N. E. Rep. 638.

69. MECHANICS' LIENS—Statement of Claim.—Parties furnishing materials for the erection of a building, in order to maintain a lien therefor, must file the statement required by the statute within four months after the completion of the building.—CHICAGO LUMBER CO. v. MERRIMACK RIVER SAV. BANK, Kan., 34 Pac. Rep. 1045.

70. MECHANICS' LIENS — Verification of Statement.—Mechanic's Lien Act 1889 (Sess. Laws 1889, p. 249), requires a person wishing to avail himself thereof to file with the county recorder a statement signed and sworn to by claimant, and, if a subcontractor, to serve a copy thereof on the owner at or before the time of filing: Held, that the filing of a subcontractor's unverified statement, of which a copy was served on the owner, and which was afterwards verified without notice to the owner, established no lien. — RICE v. CARMICHAEL, Colo., 34 Pac. Rep. 1010.

71. MINING LEASE—Abandonment. — Where a lease is executed to a party, of all coal, timber, and mineral privileges on a certain tract of land, for the term of 99 years thence ensuing, the lessee agreeing to pay 10 cents per ton for the coal mined and shipped therefrom, and for all such timber as said lessee may think merchantable, which may be cut, shipped, sawed, or moved from said leased premises, 50 cents per 1,000 square feet of lumber of inch thickness, and a proportionate sum for other thicknesses, or 25 cents per tree, at the discretion of said lessees or their assigns, no time being fixed for the commencement of operations, the lessor has a right to presume that said operations will be commenced in a reasonable time.—BLUESTONE COAL CO. v. BELL, W. Va., 18 S. E. Rep. 493.

72. MORTGAGES—Bill to Redeem. — A bill to redeem from a mortgage, if filed before the debt is due, must be dismissed, though the hearing be not had till after the debt is due.—BERNARD v. TOPLITZ, Mass., 35 N. E. Rep. 673.

73. MORTGAGE — Powers. — A mortgage of land to plaintiff's intestate contained the following power: "In trust, H, his heirs, executors, administrators and assigns, are hereby authorized and empowered, to sell all the property hereby mortgaged," etc. At the time the mortgage was made, H had no interest in the estate nor in the debt: Held, that he had merely a naked power, which on his death did not pass to his legal representative.—BARRICK v. HORNER, Md., 27 Atl. Rep. 1111.

74. MUNICIPAL CORPORATIONS—Defective Streets.—A municipal corporation is absolutely liable for injuries caused by its failure to keep in repair the streets, alleys, sidewalks, roads and bridges.—GIBSON v. CITY OF HUNTINGTON, W. Va., 18 S. E. Rep. 447.

75. NATIONAL BANKS—Insolvency—Pledgee of Shares.—A corporation which holds certain shares of stock in a national bank as collateral security for a loan, and is carried on the registry of the bank as the holder of such stock "as pledgee," is not subject, on the bank's insolvency, to the statutory liability of a stockholder.—PAULY v. STATE LOAN & TRUST CO., U. S. C. C. of App., 58 Fed. Rep. 666.

76. NATIONAL BANKS—Penalty for Usury.—Under the Revised Statutes of the United States (section 5198), which authorizes the person paying usurious interest to a national bank to recover twice the amount paid, one of the joint makers of a note on which illegal interest is charged cannot recover the penalty from the bank, where the illegal interest was paid by the other maker.—FIRST NAT. BANK OF CONCORDIA v. ROWLEY, Kan., 34 Pac. Rep. 1049.

77. NEW TRIAL—Misconduct of Juror.—The fact that conversation took place between a juror and a person connected with the defense is not ground for a new trial as a matter of right, when plaintiff, knowing the facts, made no attempt to interrogate the juror or defendant, and did not request that the juror be removed from the panel, or that the case be taken from the jury and tried anew, but continued to try the case for two days more, till its close.—HILL v. GREENWOOD, Mass., 35 N. E. Rep. 668.

78. NUISANCE—Abatement by Municipal Corporation.—The power of towns, under Rev. St. 1881, § 3333, subd. 4, "to declare what shall constitute a nuisance, and to prevent, abate, and remove the same," is by proceeding *ad rem* and must be exercised by and through general ordinances, affecting alike all property or business under like condition, in like situations, and conducted in like manner, and the possession of such power does not exclude the common-law right of the town to resort to the courts to abate a nuisance.—AMERICAN FURNITURE CO. v. TOWN OF BATESVILLE, Ind., 35 N. E. Rep. 682.

79. PARENT AND CHILD—Custody of Children.—The mother has the superior legal right to the custody and control of her minor illegitimate children, and can transfer such rights and custody to another; but the rights of the mother or her transferee are not absolute and beyond control.—MARSHALL v. REAMS, Fla., 14 South. Rep. 95.

80. PARTNERSHIP.—Plaintiffs testified that they furnished goods to J & Co. at M, on defendant's credit; J testified that defendant was a partner of J & Co. at C, that the store in M was a branch, and that the annual statement to defendant of the condition of the firm included the transactions at M; and defendant swore that he was not a partner in the firm at M, and that he first knew of the store at M when the annual statement was shown him: Held, that it was for the jury whether defendant was a partner at M.—MARKS v. BUSH, Miss., 14 South. Rep. 89.

81. PARTNERSHIP.—Though a partner has no authority to bind his copartners by entering into another partnership, yet such copartners, by participating in the business and profits of the other partnership, and joining in an action for its dissolution and the appointment of a receiver, make themselves partners in fact, and are liable as such on the dissolution.—MILLER v. RAPP, Ind., 35 N. E. Rep. 693.

82. PARTNERSHIP—Insolvency.—The holder of a part-

nership note, made payable to one partner, and indorsed by him to the holder, can prove it in insolvency against the estates both of the firm and the indorsing partner, before any dividend is declared on either.—ROGER WILLIAMS NAT. BANK v. HALL, Mass., 35 N. E. Rep. 666.

83. PAYMENT BY STRANGER—Equitable Assignment.—A stranger who pays a debt without request by the debtor, when his payment is not ratified by the debtor, may bring a suit in equity praying relief in the alternative; that is, that if the debtor do not ratify such payment the debt may be enforced in his favor, as its equitable assignee, or, if, so ratified, that he be decreed repayment of the amount paid for the use of the debtor.—CRUMLISHI'S ADMR. v. CENTRAL IMP. CO., W. Va., 18 S. E. Rep. 456.

84. PLEADINGS—Aider by Verdict.—A complaint alleged that plaintiff was owner, "by chattel mortgage, a copy of which is filed herewith," and entitled to possession, of the property specified therein; that "defendants, conspiring together secretly" to defraud plaintiff, unlawfully seized the same, and converted it to their own use, to plaintiff's damage, etc.: Held that, while the complaint is defective, either as for conversion, in not describing the property except by the mortgage filed as an exhibit, or for conspiracy, in not stating wherein plaintiff was injured as a result thereof, it is sufficient to sustain a verdict for the value of the property converted, when questioned for the first time on appeal.—ANDERSON v. OSCAMP, Ind., 35 N. E. Rep. 707.

85. PLEDGE—Conversion by pledgee.—Plaintiff gave his note to defendant, and transferred to him a note of a corporation as collateral. After the secured note had become due, it being still unpaid, defendant, without notice to plaintiff, transferred both notes to the president of the corporation, knowing his connection with the corporation: Held a conversion of the collateral note by defendant.—E. F. HALLACK LUMBER & MANUF'G CO. v. GRAY, Colo., 34 Pac. Rep. 1000.

86. PRACTICE—Service by Publication.—Where it is stated in an affidavit to obtain service by publication that the defendant is a nonresident of the State, and service cannot be had upon him within the State, and such affidavit is otherwise sufficient, it is not void or voidable under Sess. Laws 1889, ch. 107, § 2 (Civil Code § 73.)—WASHBURN v. BUCHANNAN, Kan., 34 Pac. Rep. 1049.

87. PRINCIPAL AND SURETIES—Where a defaulting, insolvent ex-sheriff, with the proceeds of taxes collected by him, has taken up a large number of county orders, and, instead of having them credited as payments on his arrearage, is engaged in secretly selling and transferring them to various persons, who are trying to collect them again from the county, at the instance of the sureties of such ex-sheriff a court of equity will interfere, and compel the application of such orders to the relief of such sureties.—MAXWELL v. MILLER, W. Va., 18 S. E. Rep. 449.

88. PRINCIPAL AND SURETY—Constable's Bond.—Gen. St. 1883, § 2072, provides that when judgment shall be rendered against a constable "and his sureties on his official bond, execution may issue against all of them," but shall not be levied on the property of the securities if sufficient property of the principal can be found to satisfy the same: Held, that the sureties may be joined with the principal in an action on a constable's bond without first determining the amount of the principal's liability.—NEWMAN v. PEOPLE, Colo., 34 Pac. Rep. 1096.

89. PUBLIC LAND—Secretary of Interior—Decision.—The decision of the secretary of the interior, an appeal from the land department, that certain land was not included in a grant to defendant, is conclusive so long as it stands, and cannot be collaterally attacked in an action to recover purchase money by one to whom defendant agreed to convey title.—COLBURN v. NORTHERN PAC. R. CO., Mont., 34 Pac. Rep, 1017.

90. RAILROAD COMMISSIONERS — Telegraph Rates.—Regulation of telegraph rates between points in the State is not an interference with interstate commerce, though the line passes out of the State between the points, it all being owned and operated by one corporation.—STATE v. WESTERN UNION TEL. CO., N. Car., 18 S. E. Rep. 389.

91. RAILROAD COMPANY—Agency.—A division superintendent of a railroad company has authority to employ physicians and surgeons to attend upon employees injured in the service of the company he represents.—UNION PAC. RY. CO. v. WINTERBOTHAM, Kan., 34 Pac. Rep. 1052.

92. RAILROAD COMPANIES—Penalties.—Elliott's Supp. § 1088, provides a penalty against "every corporation, company, or person operating a railroad within this State" for failure to give blackboard notices of the time for the arrival of passenger trains at certain stations: Held, that penalties incurred by the lessee of a railroad in operating the same do not attach to the lessor railway company.—STATE v. PITTSBURGH, C. C. & ST. L. RY. CO., Ind., 35 N. E. Rep. 700.

93. RAILROAD COMPANIES—Public Domain.—A railroad company, as authorized by act of congress, appointed an agent to enter upon public domain, and take 20,000 railroad ties necessary for the railroad, and the agent was to receive for his services a certain price for each accepted tie: Held, that the agent had no interest in the ties which could be the subject of a sale or pledge, as the title to the ties passed directly from the United States to the railroad company.—FALKE v. FASSETT, Colo., 34 Pac. Rep. 1005.

94. RAILROAD—Construction—Surface Water.—When the contour of land is such that a railroad embankment must dam the natural outlet of the surface water from farm lands, and a short trestle, no higher nor costlier than the embankment, would obviate the difficulty, the company building such embankment with knowledge of the circumstances is liable for injury caused by the surface water to the farm lands.—SINAI v. LOUISVILLE, N. O. & T. RY. CO., Miss., 14 South. Rep. 87.

95. REAL ESTATE AGENT—Commissions.—Real estate agents, authorized to sell the land of another at a stated price and for a certain compensation, have earned their commission when they produce a purchaser able, ready, and willing to purchase the land upon the terms and conditions agreed upon.—DAVIS v. LAWRENCE, Kan., 34 Pac. Rep. 1051.

96. RECEIVERS.—In an action by a receiver, a nonsuit cannot be granted at the close of the evidence on the ground that plaintiff has failed to prove that he ever filed his bond as receiver, where it appears that the court which appointed him authorized him to bring this suit, with a provision that he file a bond; that he continued to act as receiver, and resigned more than a year after his appointment.—HEGEWISCH v. SILVER, N. Y., 35 N. E. Rep. 659.

97. REMOVAL OF CAUSES — Foreign Corporation.—A petition, which shows that the defendant is a corporation chartered by the laws of a foreign country, need not allege negatively that it is not a citizen or resident of the State in which suit is brought, although it may have an office and do business in such State.—SHATTUCK v. NORTH BRITISH & MERCANTILE INS. CO. OF LONDON AND EDINBURGH, U. S. C. C. of App., 58 Fed. Rep. 609.

98. REPLEVIN—Fraudulent Conveyances.—In replevin against a sheriff for goods seized under an attachment against plaintiff's vendor, the sale to plaintiff cannot be attacked as fraudulent under a general denial, but the fraud must be specially pleaded.—SEELEMAN v. HOAGLAND, Colo., 34 Pac. Rep. 995.

99. SALE—Railroad Bonds—Coupons.—A contract for the sale of railroad bonds held to include overdue coupons, where it appeared that the contract contemplated a purchase of the railroad free from all indebtedness, and that the purchase of the bonds was merely

a means to that end.—FARMERS' LOAN & TRUST CO. v. OREGON & W. T. R. CO., U. S. C. C. (Oreg.), 58 Fed. Rep. 639.

100. SALE THROUGH AGENT—When Title Passes.—If a contract of agency is entered into, and the principal agrees to furnish to the agent on consignment certain manufactured articles, at a stipulated price, to be paid for when sold, such articles, when so furnished, remain the property of the principal until sold to a *bona fide* purchaser, and they cannot be executed and sold to pay the debts of the agent, and, if so sold, the purchaser gets no title to any such articles as against such principal.—BARNES SAFE & LOCK CO. v. BLOCH BRO. TOBACCO CO., W. Va., 18 S. E. Rep. 492.

101. STATUTES—Title of Act—Usury.—The title of a law being "An act to regulate and restrict the rate of interest in this State, and for other purposes," a provision in the body of the act declaring it unlawful for any person to reserve, charge, or take any rate of interest greater than 8 per centum per annum, and that any person violating this provision shall forfeit the interest and the excess of interest so charged or taken, or contracted to be reserved, charged, or taken, is covered by the title, and is not matter variant or different therefrom.—MAYNARD v. MARSHALL, Ga., 18 S. E. Rep. 403.

102. TAXATION—Corporations.—The Adams Express Company, a joint stock association, organized in New York, and having its property vested in trustees, in whose name all legal proceedings are conducted, the interests of the members being represented by shares, which are transferable on certain conditions, and the company not being dissolved by the death or insolvency of a shareholder, is not a corporation; and therefore its capital stock was not taxable under the Pennsylvania statutes of 1868, 1874, 1877, and 1879, as being the stock of a company "incorporated by another State" and doing business in Pennsylvania.—SANFORD v. GREGG, U. S. C. C. (Penn.), 58 Fed. Rep. 620.

103. TAXATION—Injunction.—Injunction is the proper remedy to prevent municipal officers from collecting taxes assessed against persons or property which the municipality has no legal right to tax.—CRIM v. TOWN OF PHILIPPI, W. Va., 18 S. E. Rep. 466.

104. TAXATION—Private Bank Stock.—Under chapter 54, Acts 1875, shares of bank stock are only assessable to the holder thereof in the district where he resides, and then only in case they have not been included in the assessment of the capital of the bank in the district or municipality in which it does business.—WATSON v. TOWN OF FAIRMONT, W. Va., 18 S. E. Rep. 467.

105. TAXATION—Restraining Collection.—If a municipal corporation, in taxing property, acts *ultra vires* by taxing property which it has the right to tax, beyond the limit fixed by the organic law conferring the power to tax, a court of equity will, on a bill filed by the owner of the property so illegally or excessively taxed, enjoin the collection of the taxes illegally assessed.—TYGART'S VAL. BANK v. TOWN OF PHILIPPI, W. Va., 18 S. E. Rep. 489.

106. USURY—Commissions.—The fact that a trust and banking company engaged in the business of securing loans for its customers in one instance advances money to a borrower before submitting his application and real-estate securities to the mortgage company in whose favor they are drawn, coupled with the fact that the bonds to reconvey are signed by the president of the trust company, as attorney in fact for the mortgage company, are not sufficient to justify the court in inferring, in the face of direct testimony to the contrary, that the trust company was an agent of the mortgage company, so that the payment of a commission to the former would be a payment to the latter, rendering the rate of interest usurious.—EQUITABLE MORTG. CO. v. CRAFT, U. S. C. C. (Ga.), 58 Fed. Rep. 613.

107. VENDOR AND PURCHASER—Action for Price.—In an action for the price of land, a plea that the purchaser was not put in possession, and that he cannot recover nor can plaintiff put him in possession, is demurrable, the facts alleged not showing that possession was to pass before payment of the notes.—JONES v. STATE, Ala., 14 South. Rep. 115.

108. WILLS—Execution.—The provision of Pub. St. ch. 169, § 18, that no person of sufficient understanding shall be excluded from giving evidence as a witness, does not, by the express provision of section 21, apply to the attesting witnesses to a will, and the competency of such witnesses is to be determined by the common law.—HITCHCOCK v. SHAW, Mass., 35 N. E. Rep. 671.

109. WILLS—Married Woman.—The signature of a husband, as executor, to the petition for probate of his wife's will, and the giving of bond by him, is not such a written consent to the will as is contemplated by Pub. St. ch. 147, § 6, providing that a married woman's will shall not, without her husband's written consent, operate to deprive him of his curtesy, or more than half of her personalty.—TYLER v. WHEELER, Mass., 35 N. E. Rep. 666.

110. WILLS—Mental Capacity of Testator.—On an issue as to the mental capacity of testator, while the fact that he attempted in his will to dispose of property not belonging to him is admissible, it is proper to refuse instructions as to the effect of certain instruments of writing as vesting the title to the property in testator, or the reverse.—GOODBAR v. LIDIKAY, Ind., 35 N. E. Rep. 691.

111. WILL—Nature of Estate.—Testator gave to his wife all his property, principally real estate, to "be hers without any interference from anybody for the space of her lifetime. It shall be hers in the full sense of ownership, even so far that she is empowered to sell, mortgage, or divide the same. But this shall not be so understood as that my said wife has the right to divide the property herein named among persons not kindred to me, to the disadvantage of our children, but they shall, after her death, divide the estate among them equally:" Held, that the wife took a life estate only.—BOWSER v. MATTLER, Ind., 35 N. E. Rep. 701.

112. WILLS—Rights of Legatees.—Testator gave his widow the sum of $50,000, "which may be invested in bank stock and in bonds:" Held, that the widow, upon accepting certain stock in payment of the legacy, was not entitled to the dividends that had accrued on the stock from the testator's death to the time of payment, as the legacy was not specific.—IN RE HODGMAN'S ESTATE, N. Y. 35 N. E. Rep. 660.

113. WILLS—Undue Influence.—On the issue whether undue influence had been used on testator to make his will in favor of his wife's relatives, it appearing that all his estate was derived from his wife's will and her sister's deed, a witness to said wife's will may testify that when the will and deed were executed (17 months before testator's will), the donors stated, in testator's presence, that at his death the property would go back to his wife's relatives.—APPEAL OF GUNN, Conn., 27 Atl. Rep. 1113.

114. WITNESS—Cross-Examination.—Where plaintiff's direct examination in an action to recover possession of land and for the value of rents and profits related only to the stipulations of an agreement whereby certain lots were leased, inquiries as to plaintiff's information concerning the use which had been made of such lots were not proper cross-examination.—MCCORMICK v. GLEIM, Mont., 33 Pac. Rep. 1016.

115. WITNESS—Transactions with Decedents.—A general agent in the transaction of his principal's business is not incompetent, under the act of 1889, to testify to a particular transaction or communication, at which he was present, but in which he took no part, as agent or otherwise, between his principal and her debtor, since deceased, the case on trial being between her executor and the administrator of her debtor. As to transactions or communications between himself, as agent, and the debtor, he is incompetent to testify.—MCCAMY v. CAVENDER, Ga., 18 S. E. Rep. 415.